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COMMISSIONERS

TITLES 21-24

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PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2013 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

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Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Year	Adjournment Date
2010	March 29, 2010
2011	April 7, 2011
2012	March 29, 2012
2013	April 4, 2013

TITLE 21

AERONAUTICS

CHAPTER.

1. AERONAUTICS ADMINISTRATION, §§ 21-101, 21-104, 21-105, 21-114, 21-115.
2. STATE LAW FOR AERONAUTICS, §§ 21-211, 21-213.

CHAPTER.

4. AIR NAVIGATION FACILITIES, § 21-401.
5. AIRPORT ZONING ACT, § 21-515A.

CHAPTER 1

AERONAUTICS ADMINISTRATION

SECTION.

- 21-101. Definitions.
- 21-104. Development of aeronautics.
- 21-105. Municipal airports.

SECTION.

- 21-114. Registration of aircraft — Requisites.
- 21-115. State designation of airports. [Repealed.]

21-101. Definitions. — As used in this chapter, unless the context otherwise requires:

(a) “Aeronautics” means the science and art of flight and including, but not limited to, transportation by aircraft; the operation, construction, repair or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair or maintenance of airports or other air navigation facilities; and instruction in flying or ground subjects pertaining thereto.

(b) “Aircraft” means any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air for the carriage of pilots or passengers. For the purposes of this chapter, the term “aircraft” does not include parachutes or paragliders constructed primarily of fabric.

(c) “Airport” means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon. The term “airport” shall include such other common terms as aviation field, airfield, intermediate landing field, landing field, landing area, airstrip and landing strip. For the purposes of this chapter, the term “airport” refers to a publicly owned and managed facility that is open for public use without operational restrictions on its use.

(d) “Department” means the Idaho transportation department.

(e) “Director” means the director of the Idaho transportation department.

(f) “State” or “this state” means the state of Idaho.

(g) “Air navigation facility” means any facility, other than one owned or operated by the United States, used in, available for use in, or designed for use in, aid of air navigation, including any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities, or devices used or useful as an aid, or constituting an advantage or conve-

nience, to the safe takeoff, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

(h) "Operation of aircraft" or "operate aircraft" means the navigation or piloting of aircraft in the airspace over this state or upon any airport within this state.

(i) "Airman" means any individual who engages, as the person in command or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way, and any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances, and any individual who serves in the capacity of aircraft dispatcher, or air traffic control tower operator; but does not include any individual employed outside the United States, or any individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances, to perform duties as inspector or mechanic in connection therewith, or any individual performing inspection or mechanical duties in connection with aircraft owned or operated by him.

(j) "Aeronautics instructor" means any individual who for hire or reward engages in giving instruction or offering to give instruction in flying or ground subjects pertaining to aeronautics; but excludes any instructor in a public school, university, or institution of higher learning duly accredited and approved for carrying on collegiate work, who instructs in flying or ground subjects pertaining to aeronautics, only in the performance of his duties at such school, university or institution.

(k) "Air school" means:

(1) Any aeronautics instructor who advertises, represents or holds out as giving or offering to give instruction in flying or ground subjects pertaining to aeronautics; and

(2) Any person who advertises, represents or holds out as giving or offering to give instruction in flying or ground subjects pertaining to aeronautics whether for or without hire or reward;

but excludes any public school, or university, or institution of higher learning duly accredited and approved for carrying on collegiate work.

(l) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

(m) "Municipality" means any county, city, district or other political subdivision or public corporation of this state. "Municipal" means pertaining to a municipality as herein defined.

(n) "Aviation hazard" means any new or existing structure, object of natural growth, use of land, or modification thereto, that endangers the lives and property of users of an airport, or of occupants of land in its vicinity, and that reduces the size of the area available for landing, taking off and maneuvering of aircraft, or extends up into the airspace between airports to cause disastrous and needless loss of life and property.

(o) "State airway" means a route in the navigable airspace over and above the lands or waters of this state designated by the board as a route suitable for air navigation.

(p) “Board” means the Idaho transportation board.

(q) “Public transportation” means rail, mass transit and any other public transportation activities in which the state may become involved.

History.

1947, ch. 153, § 1, p. 378; am. 1974, ch. 12, § 95, p. 61; am. 2005, ch. 174, § 1, p. 537; am. 2013, ch. 107, § 1, p. 253.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 107, added “for the carriage of pilots or passengers. For the purposes of this chapter, the term ‘air-

craft’ does not include parachutes or paragliders constructed primarily of fabric” in subsection (b).

21-104. Development of aeronautics. — (a) General supervision. The department shall have general supervision over aeronautics within this state. It is empowered and directed to encourage, foster, and assist in the development of aeronautics in this state and to encourage the establishment of airports and air navigation facilities. It shall cooperate with and assist the federal government, the municipalities of this state, and other persons in the development of aeronautics, and shall seek to coordinate the aeronautical activities of these bodies and persons. Municipalities are authorized to cooperate with the department in the development of aeronautics and aeronautics facilities in this state.

(b) Aerial search. Aerial search operations for lost aircraft and airmen shall be coordinated by the department, division of aeronautics under the direction and supervision of the chief of the bureau of homeland security within the military division.

History.

1947, ch. 153, § 4, p. 378; am. 1974, ch. 12, § 96, p. 61; am. 1992, ch. 149, § 1, p. 447; am. 2013, ch. 107, § 2, p. 253.

STATUTORY NOTES

Cross References.

Chief of bureau of homeland security, § 46-1005.

heading to the beginning of subsection (a) and added subsection (b).

Amendments.

The 2013 amendment, by ch. 107, transferred “General supervision” from the section

Compiler’s Notes.

For more on the division of aeronautics, see <http://itd.idaho.gov/aero>.

21-105. Municipal airports. — (a) Technical Services of the Department. The department may, insofar as is reasonably possible, make available its engineering and other technical services, with or without charge, to any municipality or person desiring them in connection with the planning, acquisition, construction, improvement, maintenance or operation of airports or air navigation facilities.

(b) State Financial Assistance. The department may render financial assistance by grant or loan or both to any municipality or municipalities acting jointly, in the planning, acquisition, construction, improvement, maintenance, or operation of an airport owned or controlled, or to be owned or controlled by such municipality or municipalities, out of appropriations

made by the legislature for such purposes. Such financial assistance may be furnished in connection with federal or other financial aid for the same purposes.

(c) Federal Aid. The department is authorized to act as agent of any municipality or municipalities acting jointly, upon the request of such municipality or municipalities, in accepting, receiving, receipting for and disbursing federal moneys, and other moneys public or private, made available to finance, in whole or part, the planning, acquisition, construction, improvement, maintenance, or operation of a municipal airport or air navigation facility; and if requested by such municipality or municipalities may act as its or their agent in contracting for and supervising such planning, acquisition, construction, improvement, maintenance or operation; and all municipalities are authorized to designate the department their agent for the foregoing purposes. The department, as principal on behalf of the state, and any municipality, on its own behalf, may enter into any contracts, with each other or with the United States or with any person, which may be required in connection with a grant or loan of federal moneys for municipal airport or air navigation facility purposes. All federal moneys accepted under this section shall be accepted and transferred or expended by the department upon such terms and conditions as are prescribed by the United States. All moneys received by the department pursuant to this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which such moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are hereby appropriated for the purposes for which the same were made available, to be disbursed or expended in accordance with the terms and conditions upon which they were made available.

History.

1947, ch. 153, § 5, p. 378; am. 1975, ch. 113, § 1, p. 232; am. 2013, ch. 12, § 1, p. 22.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 12, deleted former subsection (d), which read: "No municipality, county, regional airport authority in this state, except airports serving regularly scheduled airlines certified by an agency of the federal government, whether acting alone or jointly with another local public entity or with the state, shall submit to any federal

agency or department of the United States any project application under the provisions of any act of congress which provides airport planning funds, or airport construction and development funds for the expansion and improvement of the airport system, unless the pre-application for federal assistance has been first submitted to and approved by the Idaho transportation department."

21-114. Registration of aircraft — Requisites. — (a) Fees.

(1) Subject to the limitations of subsections (b) and (c) of this section, every aircraft operating within this state shall be registered with the department prior to or during each annual registration year in which the aircraft is operated within this state. The annual registration year shall

commence on the date provided by regulation, and the holding of a currently valid airworthiness certificate and a currently valid annual inspection or progressive inspection system issued by the appropriate federal agency during any part of the registration year shall be considered prima facie evidence that the aircraft is operating within this state. The department shall charge for each such registration, and for each annual renewal thereof, fees at the rate of three cents (3¢) per pound of the manufacturer's certified maximum gross weight authorized in the aircraft specification or type certificate data sheet of said aircraft issued by the federal aviation administration, and in no case to be less than twenty dollars (\$20.00) and not to exceed six hundred dollars (\$600) upon any one (1) aircraft, provided that such fee shall be in lieu of all personal property taxes on such aircraft.

Those aircraft in nonairworthy condition that are not operated during any part of the registration year are not required to register but may, at the owner's discretion, be registered in lieu of personal property tax.

Registration certificates shall be kept in the aircraft at all times. In addition to the registration certificate, an identifying decal shall be issued and placed on the left side of the aircraft either upon the vertical stabilizer thereof or upon a window nearest to the rear of the aircraft, fully visible from the outside of the aircraft.

Aircraft shall only be registered prior to or during the current annual registration year. There shall be no registration of aircraft for any registration period which is prior to the current registration year. Registration certificates for aircraft newly purchased or acquired, or aircraft imported into the state after expiration of the first six (6) months of the current annual registration year, as prescribed by the department, shall be issued at the rate of fifty percent (50%) of the annual fee. Those aircraft found in violation of the provisions of this section after the first six (6) months will pay the full year's fee and shall, at the discretion of the director, be referred to the respective county assessor for collection of personal property tax.

(2) Manufacturers and dealers license. It shall be unlawful for any person to carry on or conduct the business of buying, selling, or dealing in aircraft unless registered with the department, as such manufacturer or dealer. Any manufacturer or dealer in aircraft owning, having an interest in, or having in his possession an aircraft for the purpose of sale, shall upon the registration and payment of fees as in this chapter required, acquire one (1) registration certificate that shall bear the distinctive registration number issued to such manufacturer or dealer, and any number of identifying decals. The registration certificate shall be kept at the main office of the manufacturer or dealer and an identifying decal shall be placed upon the left side of every aircraft that the manufacturer or dealer may have an interest in which is held for sale, either upon the vertical stabilizer or upon a window nearest to the rear of the aircraft.

An identifying decal issued to a manufacturer or dealer during the calendar year for which issued can be transferred from an aircraft no longer in the possession of the dealer or manufacturer for sale or

demonstration to one acquired for the purpose of sale or demonstration during the calendar year.

Manufacturer or dealer decals may only be used on aircraft flown for purposes of sales demonstration, ferry or test.

The fee to be paid by a manufacturer or dealer in aircraft shall be forty dollars (\$40.00) for the registration certificate and one dollar (\$1.00) for each identifying decal issued to such manufacturer or dealer.

(b) Requirements for registration, issuance of certificate. Possession of the appropriate effective federal certificate relating to ownership of the aircraft and payment of the fee duly required pursuant to the provisions of this section shall be the only requisites for registration of an aircraft under this section. Registration shall be effected by filing with the department a statement containing the information reasonably required by the department for such purpose. It shall not be necessary for the registrant to provide the department with originals or copies of federal certificates. The department shall issue certificates of registration, or such other evidences of registration and payment of fees as it may deem proper. Failure to register, if required, shall be unlawful.

(c) Exemptions. The provisions of this section shall not apply to:

(1) An aircraft owned by, and used exclusively in the service of, any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia, which is not engaged in carrying persons or property for commercial purposes;

(2) An aircraft which is owned by a bona fide nonresident of this state; provided however, that this exemption shall not apply to such aircraft operated casually or continuously in this state for a cumulative period of greater than ninety (90) days in any annual registration year;

(3) An aircraft engaged principally in commercial airline or air freight flying pursuant to the provisions of part 121, title 14, of the code of federal regulations (14 CFR 121) or an equivalent foreign air carrier operating under a bilateral agreement with the United States government.

(d) Transfer of aircraft. When the ownership of an aircraft registered under the provisions of this section is transferred to a resident of this state, the new owner will be required to register the aircraft under the provisions of this section. If the transferor wishes to register another aircraft he shall pay the registration fee required by this section less the amount of registration fee already paid on the aircraft that was sold, or if the transferor shall have an aircraft to be registered with a useful load less than the aircraft that was sold, he shall pay a transfer fee of one dollar (\$1.00).

History.

1947, ch. 153, § 14, p. 378; am. 1949, ch. 191, § 1, p. 406; am. 1957, ch. 182, § 1, p. 354; am. 1961, ch. 32, § 1, p. 45; am. 1972, ch. 73, § 1, p. 150; am. 1974, ch. 37, § 1, p. 1017;

am. 1980, ch. 65, § 1, p. 133; am. 1984, ch. 227, § 1, p. 544; am. 1990, ch. 321, § 1, p. 877; am. 2001, ch. 182, § 1, p. 610; am. 2005, ch. 27, § 1, p. 133; am. 2013, ch. 107, § 3, p. 253; am. 2013, ch. 108, § 1, p. 256.

STATUTORY NOTES

Amendments.

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 107, rewrote the section to the extent that a detailed comparison is impracticable.

The 2013 amendment, by ch. 108, in the last sentence in the introductory paragraph in paragraph (b)(1), substituted “fees at the rate of three cents (3¢) per pound” for “the fees at the rate of one cent (1¢) per pound” near the beginning and substituted “federal aviation administration, and in no case to be

less than twenty dollars (\$20.00) and not to exceed six hundred dollars (\$600)” for “federal aviation agency, and in no case to exceed two hundred dollars (\$200)” near the end; and in the introductory paragraph in paragraph (b)(2), substituted “this chapter” for “this act” near the middle of the second sentence, and deleted “on the left side thereof” preceding “either upon the vertical” near the end in the last sentence.

Compiler’s Notes.

The reference enclosed in parentheses so appeared in the law as enacted.

21-115. State designation of airports. [Repealed.]

Repealed by S.L. 2013, ch. 11, § 1, effective July 1, 2013.

History.

1947, ch. 153, § 15, p. 378; am. 2011, ch. 151, § 10, p. 414.

CHAPTER 2

STATE LAW FOR AERONAUTICS

SECTION.

21-211. Proceeds of licenses and fines — State aeronautics fund.

21-213. Restrictions on use of unmanned air-

craft systems — Definition — Violation — Cause of action and damages.

21-211. Proceeds of licenses and fines — State aeronautics fund.

— All moneys collected for the licensing of aircraft and airmen, all fines and penalties paid under the provisions of laws relating to or regulating the operation, registration or licensing of aircraft or pilots, air safety or air flight not otherwise appropriated and such other funds as may be paid into the state aeronautics fund shall be paid to the state treasurer, and shall be placed by him in the state aeronautics fund, which is hereby created, and all of said state aeronautics fund is hereby appropriated for the purpose of furthering the administration, development and enforcement of laws relating to aviation, for defraying state air flight program costs, and for defraying administrative expenses of the Idaho transportation department, including per diem compensation of the Idaho transportation board, and the salary of the director of the department. Interest earned on the investment of idle moneys in the state aeronautics fund shall be paid to the state aeronautics fund.

History.

I.C., § 21-211, as added by 1957, ch. 150, § 2, p. 249; am. 1973, ch. 163, § 1, p. 310; am.

1974, ch. 12, § 105, p. 61; am. 2001, ch. 94, § 1, p. 242; am. 2011, ch. 58, § 1, p. 122.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 58, inserted “for defraying state air flight program costs” near the end of the first sentence.

Effective Dates.

Section 3 of S.L. 2011, ch. 58 declared an emergency. Approved March 11, 2011.

21-213. Restrictions on use of unmanned aircraft systems — Definition — Violation — Cause of action and damages. —

- (1)(a) For the purposes of this section, the term “unmanned aircraft system” (UAS) means an unmanned aircraft vehicle, drone, remotely piloted vehicle, remotely piloted aircraft or remotely operated aircraft that is a powered aerial vehicle that does not carry a human operator, can fly autonomously or remotely and can be expendable or recoverable.
- (b) Unmanned aircraft system does not include:
- (i) Model flying airplanes or rockets including, but not necessarily limited to, those that are radio controlled or otherwise remotely controlled and that are used purely for sport or recreational purposes; and
 - (ii) An unmanned aircraft system used in mapping or resource management.
- (2)(a) Absent a warrant, and except for emergency response for safety, search and rescue or controlled substance investigations, no person, entity or state agency shall use an unmanned aircraft system to intentionally conduct surveillance of, gather evidence or collect information about, or photographically or electronically record specifically targeted persons or specifically targeted private property including, but not limited to:
- (i) An individual or a dwelling owned by an individual and such dwelling’s curtilage, without such individual’s written consent;
 - (ii) A farm, dairy, ranch or other agricultural industry without the written consent of the owner of such farm, dairy, ranch or other agricultural industry.
- (b) No person, entity or state agency shall use an unmanned aircraft system to photograph or otherwise record an individual, without such individual’s written consent, for the purpose of publishing or otherwise publicly disseminating such photograph or recording.
- (3) Any person who is the subject of prohibited conduct under subsection (2) of this section shall:
- (a) Have a civil cause of action against the person, entity or state agency for such prohibited conduct; and
 - (b) Be entitled to recover from any such person, entity or state agency damages in the amount of the greater of one thousand dollars (\$1,000) or actual and general damages, plus reasonable attorney’s fees and other litigation costs reasonably incurred.
- (4) An owner of facilities located on lands owned by another under a valid easement, permit, license or other right of occupancy is not prohibited in this section from using an unmanned aircraft system to aerially inspect such facilities.

History.

I.C., § 21-213, as added by 2013, ch. 328,
§ 1, p. 859.

STATUTORY NOTES**Compiler's Notes.**

The abbreviation enclosed in parentheses
so appeared in the law as enacted.

CHAPTER 4**AIR NAVIGATION FACILITIES****SECTION.**

21-401. Authority to provide facilities — Ex-
pense — Issuance of bonds —

Duties of commissioners and
councilmen — Restriction on
lease of facilities.

21-401. Authority to provide facilities — Expense — Issuance of bonds — Duties of commissioners and councilmen — Restriction on lease of facilities. — Counties, highway districts and cities are hereby authorized to acquire by purchase, lease, condemnation, or otherwise, take over and hold lands either wholly or partly within or without the boundaries or corporate limits of such counties, highway districts or cities, or wholly or partly within or without the state of Idaho, for the purpose of constructing and maintaining aviation fields, airports, hangars and other air navigation facilities; to provide equipment necessary or incidental to the maintenance and operation of such aviation fields or airports; to maintain, operate and manage such aviation fields, airports and grounds and prescribe rules and regulations for the maintenance, operation and management thereof, and fix fees and rentals to be charged for the use of the same or any part thereof; to survey, plat, map, grade, ornament and otherwise improve such lands and all appurtenances thereto, whether owned and operated or owned or leased by such counties, highway districts or cities, and all approaches and avenues leading to or adjacent thereto; to lease for aviation purposes or for any purposes connected therewith and incidental thereto and for such commercial purposes as the governing bodies of such counties, highway districts and cities may determine upon all or any part of the land or lands so required, under such regulations and upon such terms and conditions as shall be established by such governing bodies, and not subject to the limitation as to length of term prescribed in section 31-836, Idaho Code; to construct, operate and maintain hangars, buildings and equipment necessary or convenient to the maintenance and operation of aviation fields or airports.

Counties, highway districts and cities are hereby empowered to provide for all costs and expenses necessary or incident to the exercise of the foregoing powers or the attainment of the foregoing objects or any of them, out of the general funds or out of any of the funds made available for such purposes, of such counties, highway districts and cities, or to issue bonds pursuant to law for the payment of any or all of such costs and expenses except for the maintenance and operation of such aviation fields or airports.

Nothing contained in this chapter shall be construed to increase the maximum of any tax levies for counties, highway districts or cities.

The boards of county commissioners of their respective counties, the highway commissioners of their respective highway districts and the councilmen of their respective cities, shall have jurisdiction and power under such limitations and restrictions as are prescribed by law to carry into full force and effect all of the provisions of this law.

Such aviation fields or airports shall in no case be leased to any person, association or corporation under such terms or conditions as to give such person, association or corporation, the exclusive right to the use of such aviation fields or airports.

History.

1929, ch. 106, § 1, p. 172; I.C.A., § 21-301; am. 1937, ch. 59, § 1, p. 79; am. 1951, ch. 54, § 1, p. 77; am. 1963, ch. 45, § 1, p. 194; am.

1971, ch. 88, § 1, p. 189; am. 1995, ch. 118, § 1, p. 417; am. 2005, ch. 203, § 1, p. 613; am. 2012, ch. 268, § 1, p. 750.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 268, deleted “provided, that no bonds shall be issued for the purposes aforesaid unless and until authorized by a vote of two-thirds (2/3) of the

qualified electors of the county, highway district or municipality, voting at such election held subject to the provisions of section 34-106, Idaho Code” from the first sentence in the second paragraph.

CHAPTER 5

AIRPORT ZONING ACT

SECTION.

21-515A. Hazards to air flight — Standards for guyed towers.

21-515A. Hazards to air flight — Standards for guyed towers. —

(1) Any temporary or permanent guyed tower fifty (50) feet or more in height that is located outside the boundaries of an incorporated city or town on land that is primarily rural or undeveloped or used for agricultural purposes, or that is primarily desert, and where such guyed tower’s appearance is not otherwise governed by state or federal law, rule or regulation, shall be lighted, marked and painted or otherwise constructed to be visible in clear air during daylight hours from a distance of not less than two thousand (2,000) feet. Guyed towers shall be required to be in accordance with the following:

- (a) Guyed towers shall be painted in seven equal alternating bands of aviation orange and white. Such alternating bands shall begin with orange at the top of the tower and end with orange at the base.
- (b) Guyed towers shall have a flashing light at the top of the tower. Such light shall be visible in clear air, with the naked eye, from a distance of two thousand (2,000) feet when flashing. Such light shall also be visible with night vision goggles.
- (c) The surface area under the footprint of the tower and six (6) feet

beyond the outer tower anchors shall have a contrasting appearance with any surrounding vegetation.

(d) Two (2) marker balls shall be attached to and evenly spaced on each of the outside guy wires.

(e) Guyed towers shall have a seven (7) foot long safety sleeve at each anchor point and shall extend from the anchor point along each guy wire attached to the anchor point.

(2) Any guyed tower that was erected prior to the effective date of this act shall be marked as required by the provisions of this section within one (1) year of the effective date of this act. Any guyed tower that is erected on or after the effective date of this act shall be marked as required by the provisions of this section at the time it is erected.

(3) For the purposes of this section, the following terms shall have the following meanings:

(a) “Guyed tower” means a tower that is supported in whole or in part by guy wires and ground anchors or other means of support besides the superstructure of the tower itself, towers used for military purposes excepted.

(b) “Height” means the distance measured from the original grade at the base of the tower to the highest point of the tower.

(c) “Temporary or permanent guyed tower” means a guyed tower erected and standing for any period of time whatsoever.

(4) This section shall not apply to power poles or structures owned and operated by an electric supplier as defined in section 61-332A(4), Idaho Code, to facilities used by a federal power marketing agency to serve public utilities or consumer-owned utilities or any structure the primary purpose of which is to support telecommunications equipment, including citizens band (CB) radio towers and all other amateur radio towers.

(5) Any person who violates a provision of this section shall be guilty of a misdemeanor.

History.

I.C., § 21-515A, as added by 2012, ch. 164,

§ 1, p. 444; am. 2013, ch. 182, § 1, p. 435; am. 2013, ch. 210, § 1, p. 499.

STATUTORY NOTES**Cross References.**

Penalty for misdemeanors when not otherwise provided, § 18-113.

Amendments.

This section was amended by 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 182, inserted “to facilities used by a federal power marketing agency to serve public utilities or consumer-owned utilities” in subsection (4).

The 2013 amendment, by ch. 210, added “including citizens band (CB) radio towers and all other amateur radio towers” at the end of subsection (4).

Compiler’s Notes.

The phrase “the effective date of this act” in subsection (2) refers to the effective date of S.L. 2012, ch. 164, which was effective July 1, 2012.

TITLE 22

AGRICULTURE AND HORTICULTURE

CHAPTER.

1. DEPARTMENT OF AGRICULTURE, §§ 22-101A, 22-103.
11. ORGANIC FOOD PRODUCTS, § 22-1103.
19. THE IDAHO INVASIVE SPECIES ACT OF 2008, §§ 22-1904, 22-1908, 22-1910, 22-1910A.
27. SOIL CONSERVATION DISTRICTS, §§ 22-2716 — 22-2721, 22-2723 — 22-2725, 22-2727, 22-2730 — 22-2735.
28. HONEY INDUSTRY, §§ 22-2802 — 22-2804, 22-2807 — 22-2815.
33. WHEAT — PROMOTION OF MARKETING, §§ 22-3301, 22-3302, 22-3304, 22-3305, 22-3308 — 22-3313, 22-3315, 22-3318.
34. PESTICIDES AND CHEMIGATION, § 22-3404.

CHAPTER.

35. PEA AND LENTIL COMMISSION, §§ 22-3502, 22-3506.
40. BARLEY — PROMOTION OF MARKETING, §§ 22-4002, 22-4005, 22-4015.
42. ALFALFA AND CLOVER SEED INDUSTRIES, §§ 22-4204 — 22-4206.
43. WEATHER MODIFICATION DISTRICTS, § 22-4301.
45. RIGHT TO FARM, §§ 22-4502 — 22-4506.
49. BEEF CATTLE ENVIRONMENTAL CONTROL ACT, §§ 22-4902, 22-4909A.
51. SEED INDEMNITY FUND LAW, §§ 22-5102 — 22-5104, 22-5118, 22-5121, 22-5125, 22-5126.
52. CARBON SEQUESTRATION ADVISORY COMMITTEE, §§ 22-5201 — 22-5206.

CHAPTER 1

DEPARTMENT OF AGRICULTURE

SECTION.

22-101A. Rules of the director.

SECTION.

22-103. Duties of director.

22-101A. Rules of the director. — (1) The legislature directs that any rule proposed by the director which is broader in scope or more stringent than federal law or regulations, or proposes to regulate an activity not regulated by the federal government, is subject to the following additional requirements: the notice of proposed rulemaking and rulemaking record requirements under chapter 52, title 67, Idaho Code, must clearly specify that the proposed rule, or portions of the proposed rule, are broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government, and must delineate which portions of the proposed rule are broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government.

(2) In proposing any rule or portions of any rule pursuant to chapter 49, title 22, Idaho Code, chapter 38, title 25, Idaho Code, or chapter 4, title 37, Idaho Code, the director shall utilize:

- (a) The best available peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and
- (b) Data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justify use of the data.

(3) Any proposed rule subject to this section which proposes a standard necessary to protect human health and the environment shall also include in the rulemaking record requirements under chapter 52, title 67, Idaho Code, the following additional information:

- (a) Identification of each population or receptor addressed by an estimate of public health effects or environmental effects; and
- (b) Identification of the expected risk or central estimate of risk for the specific population or receptor; and
- (c) Identification of each appropriate upper bound or lower bound estimate of risk; and
- (d) Identification of each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty; and
- (e) Identification of studies known to the director that support, are directly relevant to, or fail to support any estimate of public health effects or environmental effects and the methodology used to reconcile inconsistencies in the data.

(4) The director shall also include a summary of the information required by subsection (3) of this section in the notice of rulemaking required by chapter 52, title 67, Idaho Code.

(5) Any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, submitted to the standing committee of the legislature pursuant to section 67-5291, Idaho Code, shall include a notice by the director identifying the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government.

(6) Nothing provided herein is intended to alter the scope or effect of any other provision of state law which limits or prohibits agency action or rulemaking that is broader in scope or more stringent than federal law or regulations.

(7) The provisions of this section place conditions on the director's rulemaking authority, which authority is authorized pursuant to provisions other than those set forth in chapter 1, title 22, Idaho Code. Nothing provided in this section is intended to grant the director additional rulemaking authority.

(8) The requirements of this section shall apply to the director's promulgation of new rules as well as the amendment of rules in effect on the effective date of this act.

History.

I.C., § 22-101A, as added by 2011, ch. 233,
§ 1, p. 636.

STATUTORY NOTES

Compiler's Notes.

The phrase "the effective date of this act" in subsection (8) refers to the effective date of S.L. 2011, ch. 233, which is July 1, 2011.

22-103. Duties of director. — The director of the department of agriculture shall execute the powers and discharge the duties vested by law in him or in the department, including, but not limited to, the following:

- (1) Pursuant to chapter 53, title 67, Idaho Code, hire, assign duties and evaluate the performance of all employees of the department.

(2) Designate employees for special assignment, office or function as the needs of the department may require.

(3) Acquire, generate, develop and disseminate information and data concerning agricultural pursuits, productivity and product quality.

(4) Encourage and promote in every practical manner, the interests of agriculture, horticulture, apiculture, aquaculture, the livestock industries, poultry and fowl raising, wool and fur-bearing animals and their allied industries.

(5) Assist, encourage and promote the organization of farmers' institutes, agricultural, horticultural, management or cooperative societies and organizations for the benefit of agricultural pursuits in this state.

(6) Promote improved methods of production, storage, sales and marketing of agricultural industries.

(7) Establish and promulgate standards of construction, use and sanitation of open and closed receptacles for farm products, and standards for grade or other classification of farm products.

(8) Prescribe and promulgate rules governing marks, brands and labels, and the registration thereof, for use upon receptacles for farm products.

(9) Promote, in the interest of the public, economical and efficient use of products and commodities used in the production of agricultural, horticultural, meats and other products and farm commodities and their distribution.

(10) Cooperate with producers, processors and consumers in devising and maintaining economical and efficient systems of distribution, and to assist in the reduction of waste and expense incidental to the marketing of agricultural products.

(11) Cooperate with the secretary, colleges and universities, experiment stations, and other agencies which cooperate in devising, research and development and utilization of improved agricultural production and other activities.

(12) Investigate the practices, methods of factors, management techniques of commission merchants, track buyers and others who receive, solicit, buy, sell, handle on commission or otherwise, or deal in grains, eggs, livestock, vegetables or other products used as human foods, to the end that distribution of such commodities through such factors, commission merchants, track buyers and others be efficiently and economically accomplished without hardship, waste or fraud.

(13) Enter and inspect any right-of-way of any irrigation canal, railway, public highway, field, orchard, nursery, fruit or vegetable packing house, store room, sales room, storage facility, depot or other place where fruits and vegetables are grown or stored and to inspect fruits, trees, plants, vines, shrubs or other articles within the state, and if such places or articles are infested with pests, insects or their eggs or larvae, or with any contagious or transmittable diseases injurious to plant life, to abate or eradicate the same as a nuisance.

(14) Provide treatment for and prevent the spread of infectious or communicable diseases among bees, livestock, fur-bearing animals or domestic animals through the systematic and periodic inspection, testing or treatment of such bees and animals at the expense of the owner thereof.

(15) Protect the livestock interests of the state from losses due to disease or hazards to animal health and communicable to humans through agricultural products. The director is authorized to regulate, as deemed necessary, commercial livestock truck washing facilities. This includes permitting for the treatment or disposal, at any location, of any wash water generated by the facility. This subsection preempts Idaho department of environmental quality's authority to issue land application permits and to do plan and specification reviews under section 39-118, Idaho Code, for livestock truck wash facilities, but does not affect any other authority of the Idaho department of environmental quality.

(16) Maintain recording of earmarks, eartags or other identifying marks not covered under any other provisions of law.

(17) Purchase, lease, hold, sell, and dispose of real and personal property of the department when, in the judgment of the director, such transactions promote the purposes for which the department is established.

(18) Contract with any state agency, federal agency or agency of another state concerning any matter, program or cooperative effort within the scope and jurisdiction of its authority pursuant to law.

(19) Assist in the improvement of country life, farm occupations and to cooperate in effectuating equality of opportunity of those employed in agricultural pursuits in the state of Idaho.

(20) Investigate diseases, contamination of livestock and poultry, agricultural, horticultural, and farm products, suspected to be infected or contaminated by bacterial, viral, protozoal, parasitic, chemical, nuclear, botanical or other disease-producing agents, or carrying a residue of any such disease-producing agent or chemical in excess of any tolerance established by federal or state law or regulation and to examine, conduct tests, and issue "hold orders" on any livestock, poultry, agricultural, horticultural or farm products as deemed necessary to effectuate a diagnosis of disease, contamination or chemical level to safeguard and protect animal and man. And additionally, authorize and implement a predator control program on state and private lands using any kind of toxic material or substance suitable for such purpose. Any toxic material or substance shall be approved for use by the director. In order to carry out the provisions of this subsection, the director shall prescribe and promulgate rules pursuant to chapter 52, title 67, Idaho Code.

(21) Prescribe by rule an interest charge which may be assessed on all accounts which are thirty (30) days past due from the initial billing date or the assessment due date. The interest rate charged shall not exceed twelve percent (12%) per annum.

(22) To take all steps that are deemed necessary to prevent and control damage or conflicts on federal, state, or other public or private lands caused by predatory animals, rodents, or birds, including threatened or endangered wildlife within the state of Idaho as are established by federal or state law, federal or state regulation, or county ordinance, that are injurious to animal husbandry, agriculture, horticulture, forestry, wildlife and human health and safety.

(23) Administer a range program to provide support, coordination and expertise to Idaho rangeland livestock producers and land and wildlife

management agencies for the planning and management of vegetation, grazing permits and other rangeland resources that are of importance to the livestock industry. The program shall also provide technical expertise and support to state and industry entities in reviewing various federal environmental impact statements, federal environmental assessments and other state and federal proposals that impact grazing, vegetation management or other rangeland resources or uses important to the livestock industry.

(24) To administer oaths, certify to all official acts and subpoena any person in this state as a witness; to compel through subpoena the production of books, papers, and records; and to take the testimony of any person on deposition in the same manner as prescribed by law in the procedure before the courts of this state. A subpoena issued by the director shall extend to all parts of the state and may be served by any person authorized to do so. All powers of the director enumerated in this subsection with respect to administering oaths, power of subpoena, and other powers in hearings on complaints shall likewise be applicable to hearings held on applications for the issuance or renewal of licenses.

(25) To appoint, as necessary, committees for the purpose of advising the director on any and all matters relating to agricultural programs within the Idaho department of agriculture.

(26) Cooperate with producers, industry and technology groups, and other agencies to encourage the growth of technology within the state's agricultural industries while protecting, as necessary, the integrity of existing agriculture and agricultural marketing channels.

History.

1974, ch. 18, § 2, p. 364; am. 1976, ch. 90, § 1, p. 304; am. 1978, ch. 238, § 1, p. 508; am. 1982, ch. 9, § 1, p. 12; am. 1990, ch. 376, § 1, p. 1039; am. 1993, ch. 30, § 1, p. 98; am. 1994, ch. 96, § 1, p. 219; am. 1998, ch. 120, § 1, p.

448; am. 2002, ch. 104, § 1, p. 282; am. 2006, ch. 220, § 1, p. 657; am. 2009, ch. 32, § 1, p. 87; am. 2009, ch. 123, § 1, p. 388; am. 2010, ch. 79, § 4, p. 133; am. 2011, ch. 95, § 1, p. 206.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 79, resolved the subsection designation issues created by the multiple amendments of this section in 2009.

The 2011 amendment, by ch. 95, deleted former subsection (11), which read: "Support

a market news service to gather and diffuse timely information and statistics concerning supply, demand, prevailing prices and commercial movement of agricultural products" and redesignated the subsequent subsections accordingly.

CHAPTER 11

ORGANIC FOOD PRODUCTS

SECTION.

22-1103. Administration and enforcement —

Rules — Annual list distribution.

22-1103. Administration and enforcement — Rules — Annual list distribution. — (1) The administration and enforcement of the provisions of this chapter shall be under the director. The director is authorized, in

conformance with chapter 52, title 67, Idaho Code, to promulgate rules concerning, but not limited to:

- (a) Standards for agricultural crops and livestock produced for sale as organically grown food products.
 - (b) Records required of organically grown food products producers.
 - (c) The number of on-site inspections, announced and unannounced.
 - (d) Chemical residue analysis of organically grown food products and fees for conducting such analysis.
 - (e) Certification of private laboratories to conduct chemical residue analyses.
 - (f) Standards that a producer must meet to be recognized as a producer under the provisions of this chapter.
 - (g) Development and distribution of the organic certification seal and standards for its application for use on Idaho organically grown food products.
 - (h) Development and implementation of labeling standards.
 - (i) Rules establishing organic standards for poultry and poultry products, livestock and livestock products, milk and dairy products or aquaculture products, which will be promulgated in consultation with the appropriate agricultural or commodity organizations as determined by the director. No pending or temporary rule adopted by the department shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review pursuant to sections 67-5224 and 67-5291, Idaho Code.
 - (j) Standards for health care and medical treatment for livestock qualifying as organically grown food products and for the prevention and control of infections or communicable diseases among such livestock.
 - (k) Standards for prohibitions against denial of health care for or medical treatment of livestock in order to obtain or retain organic certification.
- (2) An annual list of all certified organic producers, handlers and vendors shall be distributed to state regulatory authorities, and to other persons upon request.

History.

I.C., § 22-1103, as added by 1990, ch. 145, § 1, p. 325; am. 1999, ch. 136, § 3, p. 383; am.

2000, ch. 190, § 1, p. 470; am. 2001, ch. 75, § 3, p. 181; am. 2011, ch. 50, § 1, p. 114.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 50, deleted former paragraph (1)(j), which read: "Education. The director may not issue a certificate under the provisions of this chapter unless the applicant has met the requirements im-

posed by the director to ensure the applicant has the knowledge necessary to comply with the requirements of this chapter" and redesignated the subsequent paragraphs accordingly.

CHAPTER 19

THE IDAHO INVASIVE SPECIES ACT OF 2008

SECTION.

22-1904. Definitions.

22-1908. Authority to conduct inspections.

SECTION.

22-1910. Hold order.

22-1910A. Law enforcement.

22-1904. Definitions. — Unless otherwise noted in this chapter the definitions as set forth in section 22-2005, Idaho Code, are adopted by reference.

(1) “Conveyance” means a terrestrial or aquatic vehicle or a vehicle part that may carry or contain an invasive species or plant pest. A conveyance includes a motor vehicle, a vessel, a motorboat, a sailboat, a personal watercraft, a trailer or any other means or method of transportation. “Conveyance” also includes a live well or a bilge area of a watercraft.

(2) “Environmental harm” means to cause significant adverse effects on uses of natural resources or on plants or animals.

(3) “Invasive species” means species not native to Idaho, including their seeds, eggs, spores, larvae or other biological material capable of propagation, that cause economic or environmental harm and are capable of spreading in the state. “Invasive species” does not include crops, improved forage grasses, domestic livestock, or other beneficial nonnative organisms.

History.

I.C., § 22-1904, as added by 2008, ch. 387,
§ 1, p. 1063; am. 2010, ch. 342, § 1, p. 898.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 342, added

subsection (1) and redesignated the subsequent subsections accordingly.

22-1908. Authority to conduct inspections. — (1) In order to accomplish the purposes of this chapter, the director may enter upon and inspect any public or private premises, lands, bodies of water, or means of conveyance, or article of any person within this state, for the purpose of inspecting, surveying, treating, controlling, collecting samples, or destroying any invasive species.

(2) The director may establish check stations at points of entry to the state, or other facilities and sites throughout the state, as necessary to carry out the provisions of this chapter.

(3) No person shall proceed past or travel through an established inspection station during its hours of operation while towing, carrying or transporting any conveyance without presenting such conveyance for inspection.

History.

I.C., § 22-1908, as added by 2008, ch. 387,
§ 1, p. 1064; am. 2010, ch. 342, § 2, p. 898.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 342, added subsection (3).

22-1910. Hold order. — The director may issue hold orders to take prompt regulatory action in invasive species emergencies on any article, commodity, conveyance, vehicle or other means of transportation entering this state when it is reasonably believed that the article, commodity, conveyance, vehicle or other means of transportation is in violation of this chapter or rules promulgated hereunder. The hold order shall contain contact information for the owner of the article, commodity, conveyance, vehicle or other means of transportation, the reason for the hold order, and the conditions for release.

History.

I.C., § 22-1910, as added by 2008, ch. 387, § 1, p. 1064; am. 2010, ch. 342, § 3, p. 898.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 342, in the first sentence, inserted “conveyance” and “when it is reasonably believed that the arti-

cle, commodity, conveyance, vehicle or other means of transportation is” and added the last sentence.

22-1910A. Law enforcement. — (1) It shall be the duty of all peace officers within the state of Idaho, as defined by section 19-5101(d), Idaho Code, to enforce the provisions of this chapter by making a complaint or citation as described in section 19-3901, Idaho Code.

(2) Peace officers within the state of Idaho, upon reasonable suspicion that a conveyance is infested with quagga mussels or zebra mussels, may require a driver of a vehicle to stop and submit to an inspection of the exterior of any conveyance(s) in plain view.

(3) If the peace officer has probable cause to believe that the conveyance(s) are contaminated with quagga mussels or zebra mussels, or when a conveyance is found to be contaminated or otherwise carrying quagga mussels or zebra mussels, the peace officer shall detain the vehicle and conveyance(s) and immediately summon a tow truck to transport the conveyance(s) to the nearest available impound yard.

(4) Upon impoundment, the director shall issue a hold order as provided in this chapter specifying the conditions for release.

History.

I.C., § 22-1910A, as added by 2010, ch. 342, § 4, p. 898.

STATUTORY NOTES

Compiler’s Notes.

The letters “s” enclosed in parentheses so appeared in the law as enacted.

CHAPTER 27

SOIL CONSERVATION DISTRICTS

SECTION.

22-2716. Legislative determination and declaration of policy.

22-2717. Definitions.

22-2718. Idaho state soil and water conservation commission.

22-2719. Creation of soil conservation districts.

22-2720. Consolidation of or deletion from and addition to new or existing districts.

22-2721. Election, appointment, qualifications and tenure of supervisors.

22-2723. Cooperation between districts.

22-2724. State agencies to cooperate.

22-2725. Discontinuance of districts.

22-2727. Allocation of funds to districts.

22-2730. Resource conservation and range-

SECTION.

land development fund created.

22-2731. Allocation of fund.

22-2732. Loans from fund — Application — Approval — Repayment.

22-2733. Grants from state soil and water conservation commission general fund — Application — Approval — Grant agreement.

22-2734. Cost-share from state soil and water conservation commission general fund — Application — Approval.

22-2735. Payments by the state soil and water conservation commission — Rules — Approval of attorney general — Audit of payments.

22-2716. Legislative determination and declaration of policy. —

(1) It is the determination of the state of Idaho that:

(a) Forest lands, rangelands and agricultural lands maintained in a healthy condition are a legitimate land use contributing to the economic, social and environmental well-being of the state and its citizens;

(b) It is essential to the general welfare of all citizens of this state that multiple use conservation improvements be implemented on a broader scale on both public and private lands;

(c) Due to numerous economic and practical issues relating to the improvements of individual tracts of land, both public and private resource conservation improvements, projects and programs of the nature contemplated by this chapter would enhance the economic productivity and environmental quality of the state; and

(d) It is sound public policy for the state of Idaho to provide for accounts to finance loans, grants, cost-share funding and tax incentives to the end that forest lands, rangelands and agricultural lands within the state can provide the greatest benefit to all concerned.

(2) It is the intent of the state of Idaho to provide a means by which funds, including federal, state, private and other moneys, can be obtained and utilized for the accelerated development of water quality programs, multiple use forest land, rangeland, and agricultural land conservation improvements in the state, and to provide that these improvements, projects and programs be locally planned, coordinated and implemented through statutory provisions pertaining to soil conservation districts, the state soil and water conservation commission, appropriate state and federal agencies and the owners and operators of privately owned lands.

(3) It is in the best interest of the state of Idaho:

(a) To emphasize nonregulatory, science-based technical assistance, incentive-based financial programs and informational and educational programs at the local level;

- (b) To maintain, preserve, conserve and rehabilitate forest lands, rangelands and agricultural lands to assure the protection and productivity of the state's natural resources;
 - (c) That soil conservation districts, as governmental subdivisions, and the state soil and water conservation commission, as a state agency, are the primary entities to provide assistance to private landowners and land users in the conservation, sustainment, improvement and enhancement of Idaho's natural resources;
 - (d) To establish policies for cooperative working relationships between local soil conservation districts, the state soil and water conservation commission, local, state and federal agencies and public and private groups to plan, develop and implement conservation goals and initiatives with local landowners and land users;
 - (e) That soil conservation districts and the state soil and water conservation commission lead nonregulatory efforts to conserve, sustain, improve and enhance Idaho's private and state lands and to provide assistance to private landowners and land users to plan, develop and implement conservation plans addressing soil, water, air, plant and animal resources. Technical, financial and educational assistance to landowners and land users is vital to that effort; and
 - (f) That the state soil and water conservation commission provide support to soil conservation districts in the wise use and enhancement of soil, water and related resources.
- (4) It is the policy of the state of Idaho:
- (a) To provide appropriate tax policies and program mechanisms that provide incentives for private landowners and land users to voluntarily manage forest lands, rangelands and agricultural lands in a manner that promotes conservation;
 - (b) That the health, safety and general welfare of the people of this state can be greatly enhanced by providing nonregulatory opportunities to landowners and land users in order to increase the ability of such landowners and land users to readily understand and plan for local, state and federal natural resource requirements and opportunities through technological innovation and processes;
 - (c) To enhance natural resource productivity in order to promote a strong natural resource sector, reduce unintended adverse effects of resource development and use, protect individual and community health and safety and encourage stewardship;
 - (d) That conservation plan implementation shall include best management practices implemented according to the standards and specifications developed by the United States department of agriculture natural resources conservation service (NRCS) as designated by the agricultural pollution abatement plan. Those practices shall include, but not be limited to: irrigation water management systems; prescribed grazing; forest stand improvement; establishment of grass, trees and shrubs to reduce wind and water erosion; promotion of sound community development; protection of water and air resources from agricultural nonpoint sources of impairment; maintenance, restoration or enhancement of wetlands and

fish and wildlife habitat; protection of upstream watersheds from flood risk; and protection of watersheds from the effects of chronic water shortages and risks; and

(e) That all conservation programs authorized pursuant to this chapter shall deliver services fairly and equitably, strengthen the conservation district delivery system, provide timely science-based information and provide conservation information and educational programs and experiences to youth and adults.

History.

I.C., § 22-2716, as added by 2003, ch. 107,
§ 2, p. 334; am. 2010, ch. 279, § 1, p. 719.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 279, in subsection (2) and in paragraphs (3)(c) through

(3)(f), substituted “state soil and water conservation commission” for “state soil conservation commission”.

22-2717. Definitions. — Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context:

(1) “Administrator” means the administrator for the Idaho state soil and water conservation commission.

(2) “Agency” includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

(3) “Agricultural pollution abatement plan” or “ag plan” means the document developed by the state soil and water conservation commission and approved by the commission and the department of environmental quality, that provides appropriate technical, programmatic, informational and educational processes, guidelines and policies for addressing agricultural pollution.

(4) “Best management practices” or “BMPs” means practices, techniques, or measures developed or identified by the designated agency and identified in the state water quality management plan which are determined to be a cost-effective and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals.

(5) “Commission” or “state soil and water conservation commission” means the agency created in section 22-2718, Idaho Code.

(6) “Conservation plan” means a description of identified natural resource issues and a specific schedule of implementation of component practices necessary to resolve those specific resource issues as agreed upon by the landowner.

(7) “Designated agency” is as defined in section 39-3602, Idaho Code.

(8) “District,” “conservation district,” “soil conservation district,” or “soil and water conservation district” means a governmental subdivision(s) of this state, and a public body corporate and politic, organized in accordance with the provisions of this chapter, for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(9) "Due notice" means notice published at least twice, with an interval of at least seven (7) days between the two (2) publication dates, in a newspaper or other publication of general circulation within the appropriate area, or if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjournment dates.

(10) "Eligible applicant" means an individual agricultural owner, operator, partnership, corporation, conservation district, irrigation district, canal company or other agricultural or grazing interest.

(11) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivisions, agency, or instrumentality, corporate or otherwise, of either of them.

(12) "Idaho OnePlan" means a computer-based system for improving efficiency and effectiveness of natural resource planning by landowners and land users.

(13) "Landowner" or "owner" includes any person, firm, or corporation who shall hold title to any lands lying within a district organized under the provisions of this chapter. A buyer on contract, who is the occupier of land, shall be construed as landowner.

(14) "Land user" means any entity with a lease, permit or similar business agreement with a landowner to implement, manage or utilize such land for activities related to use of the land.

(15) "Natural resources conservation service" or "NRCS" means the agency governed by the provisions of 16 U.S.C. sections 590a through 590d and 590f.

(16) "Nominating petition" means a petition filed under the provisions of section 22-2721, Idaho Code, to nominate candidates for the office of supervisor of a soil conservation district.

(17) "Participant" means an individual agricultural owner, operator, partnership, private corporation, conservation district, irrigation district, canal company, or other agricultural or grazing interest approved by the commission or an individual agricultural owner, operator, partnership, or private corporation approved for implementation of conservation improvements, projects, or the water quality program for agriculture.

(18) "Petition" means a petition filed under the provisions of subsection (1) of section 22-2719, Idaho Code, for the creation of a district.

(19) "Project sponsor" means a conservation district, irrigation district, canal company, or other agricultural or grazing interest, as determined appropriate by the commission, that enters into a conservation improvement or water quality project agreement with the commission.

(20) "Qualified elector" means any person who is qualified to vote pursuant to the requirements of section 34-104, Idaho Code.

(21) "Riparian land" means the beds of streams, the adjacent vegetation communities and the land thereunder, which are predominately influenced by their association with water and are privately owned.

(22) "Specifications" means the materials, operations and procedures necessary to obtain the desired standards of construction and installation.

(23) "Standards" means the minimum limits of technical excellence of a component practice for its planning, design and construction.

(24) "State" means the state of Idaho.

(25) "Supervisor" means one (1) of the members of the governing body of a district elected or appointed in accordance with the provisions of this chapter.

(26) "Total maximum daily load" is as defined in section 39-3602, Idaho Code.

(27) "United States" or "agencies of the United States" includes the United States of America, the natural resources conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

History.

1957, ch. 218, § 3, p. 476; am. 1982, ch. 254, § 1, p. 646; am. 1995, ch. 118, § 7, p. 417; am.

1997, ch. 180, § 2, p. 498; am. 2000, ch. 160, § 2, p. 404; am. 2003, ch. 107, § 3, p. 334; am. 2010, ch. 279, § 2, p. 719.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 279, added subsection (1) and redesignated former subsections (1) and (2) as present subsections (2) and (3); deleted former subsection (3), which was the definition for "agriculture"; in subsections (3) and (5), substituted "state soil and water conservation commission" for "state soil

conservation commission"; in subsections (8) and (25), substituted "chapter" for "act"; deleted former subsection (12), which was the definition for "Idaho association of soil conservation districts (IASCD)," and redesignated the subsequent subsections accordingly; and updated the subsection designation in subsection (18).

22-2718. Idaho state soil and water conservation commission. —

(1) There is hereby established and created in the department of agriculture of the state of Idaho the Idaho state soil and water conservation commission which shall perform all functions conferred upon it by this chapter and shall be a nonregulatory agency. The commission shall consist of five (5) members appointed by the governor. In appointing commission members, the governor shall give consideration to geographic representation. Commission members shall be chosen with due regard to their demonstrated expertise including, but not limited to, knowledge of and interest in water quality and other natural resource issues, production agriculture, banking or other similar financial experience or experience as a county commissioner. The soil and water conservation districts may submit to the governor a list of up to three (3) names for each vacancy on the commission and the governor may, in his discretion, consider any such submission in the appointment of commission members. The term of office of each commission member shall be five (5) years; except that upon July 1, 2010, the governor shall appoint one (1) member for a term of one (1) year, one (1) member for a term of two (2) years, one (1) member for a term of three (3) years, one (1) member for a term of four (4) years and one (1) member for a term of five (5) years. From and after the initial appointment the governor shall appoint a member of the commission to serve in office for

a term of five (5) years commencing upon July 1 of that year. A vacancy which occurs in an unexpired term shall be filled for its remainder by the governor's appointment. Each vacancy on the commission shall be filled by appointment by the governor. Such appointments shall be confirmed by the senate. Commission members shall serve at the pleasure of the governor. The commission may invite the state conservationist of the United States department of agriculture natural resources conservation service, a representative from a district or districts and the dean of the college of agriculture of the university of Idaho or his designated representative, or any other person or entity as the commission deems appropriate, to serve as nonvoting advisory members of the commission. The commission shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings and promulgate such rules as may be necessary for the execution of its functions under this chapter.

(2) The state soil and water conservation commission shall appoint the administrator of the state soil and water conservation commission. The state soil and water conservation commission may employ such technical experts and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The commission may call upon the attorney general of the state for such legal services as it may require. It shall have authority to delegate to its chairman, to one (1) or more of its members, or to one (1) or more agents or employees, such powers and duties as it may deem proper. The commission may establish offices, incur expenses, enter into contracts and acquire services and personal property as may be reasonable for the proper administration and enforcement of this chapter. Upon request of the commission, for the purpose of carrying out any of its functions, the supervising officer of any state agency, or of any state institution of learning, shall insofar as may be possible under available appropriation, and having due regard to the needs of the agency to which the request is directed, assign or detail to the commission members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys or studies as the commission may request.

(3) The commission shall designate its chairman, and may from time to time, change such designation. A majority of the commission shall constitute a quorum and the concurrency of a majority in any matter within their duties shall be required for its determination. The chairman and members of the commission shall be compensated as provided by section 59-509(h), Idaho Code. The commission shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

(4) In addition to the duties and powers hereinafter conferred upon the state soil and water conservation commission, it shall have the following responsibilities:

(a) To offer such assistance as may be appropriate to the supervisors of

soil conservation districts in the carrying out of any of their powers and programs.

(b) To keep the supervisors of each of the several soil conservation districts informed of the activities and experience of all other soil conservation districts and to facilitate an interchange of advice and experience between such districts and cooperation between them.

(c) To coordinate the progress of the several soil conservation districts so far as this may be done by advice and consultation.

(d) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts.

(e) To disseminate information throughout the state concerning the activities and programs of the soil conservation districts in areas where their organization is desirable.

(f) To provide for the establishment and encouragement of the "Idaho OnePlan" as a primary computer-based conservation planning process for all natural resource concerns. Establishment and encouragement will be accomplished through an executive group and steering committee both containing private, state and federal representation. The information provided by those using the "Idaho OnePlan" shall be deemed to be trade secrets, production records or other proprietary information and shall be kept confidential and shall be exempt from disclosure pursuant to section 9-340D, Idaho Code.

(5) In addition to other powers, functions and duties of soil conservation districts and the state soil and water conservation commission provided in this chapter, the commission shall have the following additional powers, functions and duties:

(a) The commission shall conduct, in cooperation with appropriate federal and state agencies and the owners and operators of privately owned forest lands, rangelands and agricultural lands in this state, conservation improvements on or in respect to these lands for the purposes of implementing conservation systems to conserve and improve natural resource conditions;

(b) The commission shall assist and advise soil conservation districts and other entities in implementing the conservation improvements, projects and the water quality program for agriculture. To the extent that there are available general funds, the commission shall provide for grants and cost-share opportunities and, as legislatively designated, utilize the resource conservation and rangeland development fund for loans for conservation improvements. Provided however, that the commission shall determine whether general or resource conservation and rangeland development funds are available before approving any conservation improvements, projects and cost-share opportunities and, after having made such determination, shall enter into the necessary contracts for implementation;

(c) The commission shall be the agency responsible for the administration of funds accruing to the resource conservation and rangeland development fund and for all general funds appropriated as a separate and distinct action of the legislature to implement the powers, functions and duties of soil conservation districts and the commission;

(d) On or before March 1 of each year, the commission shall report to the senate agricultural affairs committee and the house agricultural affairs committee; and

(e) The commission shall promulgate such rules as are necessary to carry out the purposes of this chapter.

History.

1957, ch. 218, § 4, p. 476; am. 1967, ch. 28, § 1, p. 48; am. 1971, ch. 100, § 1, p. 215; am. 1974, ch. 17, § 2, p. 308; am. 1980, ch. 247,

§ 10, p. 582; am. 1989, ch. 109, § 1, p. 250; am. 1997, ch. 180, § 3, p. 498; am. 2000, ch. 160, § 3, p. 404; am. 2003, ch. 107, § 4, p. 334; am. 2010, ch. 279, § 3, p. 719.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 279, in the section heading and throughout the section, substituted "state soil and water conservation commission" for "state soil conservation commission"; rewrote subsections (1) and (2) to the extent that a detailed comparison is impracticable; in paragraph (4)(a), deleted "organized as provided hereinafter" following "soil conservation districts"; in paragraph (4)(b), twice inserted "soil conservation," and

deleted "organized under the provisions of this chapter" following the first occurrence of "districts" and "organized hereunder" following the second occurrence of "districts"; in paragraph (4)(c), deleted "organized hereunder" following "districts"; in paragraph (5)(c), deleted "state soil conservation" preceding the first occurrence of "commission"; and added paragraph (5)(d) and made a related redesignation.

22-2719. Creation of soil conservation districts. — (1) Any twenty-five (25) owners of land lying within the limits of the territory proposed to be organized into a district may file a petition with the state soil and water conservation commission asking that a soil conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

- (a) The proposed name of said district;
- (b) That there is need, in the interest of the public health, safety and welfare, for a soil conservation district to function in the territory described in the petition;
- (c) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate;
- (d) A request that the state soil and water conservation commission duly define the boundaries for such district; that a referendum be held within the territory so defined on the question of the creation of a soil conservation district in such territory; and that the commission determine that such a district be created.

Where more than one (1) petition is filed covering parts of the same territory, the state soil and water conservation commission may consolidate all of any such petitions.

(2) Within thirty (30) days after such petition has been filed with the state soil and water conservation commission, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety and welfare, of the creation of such district, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other

proceedings taken under this chapter, and upon all questions relevant to such inquiries. All owners of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given the hearing shall be adjourned and the due notice of further hearing shall be given throughout the entire area considered for inclusion in the district, and such further hearing held. After such hearing, if the commission shall determine upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need in the interest of the public health, safety and welfare, for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determination and in defining such boundaries, the commission shall give due weight and consideration to the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to the existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization under the provisions of this chapter, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislature determinations set forth in section 22-2716, Idaho Code. The territory to be included within such boundaries need not be contiguous. If the commission determines after such hearing, after due consideration of the said relevant facts, that there is no need for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six (6) months shall have expired from the date of the denial of such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determinations made thereon.

(3) After the commission has made and recorded a determination that there is need, in the interest of the public health, safety and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil conservation districts in this chapter is administratively practicable and feasible. To assist the commission in the determination of such administrative practicability and feasibility, it shall be the duty of the commission, at the next election held after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum, subject to the provisions of section 34-106, Idaho Code, within the proposed district upon the proposition of the creation

of the district, and to cause notice of such election to be given as provided in section 34-1406, Idaho Code. The question shall be submitted by ballots upon which the words "For creation of a soil conservation district of the lands below described and lying in the county(ies) of and" and "Against creation of a soil conservation district of the lands below described and lying in the county(ies) of and" shall appear, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the commission. All qualified electors who own lands or reside within the proposed district shall be eligible to vote in said referendum.

(4) The commission shall pay all expenses for the issuance of such notice and the conduct of such hearings and election and shall supervise the conduct of such hearings and election. It shall issue appropriate regulations governing the conduct of such hearings and election. No informalities in the conduct of the election or in any matter relating thereto shall invalidate the election or the result thereof if notice thereof shall have been given substantially as herein provided and the election shall have been fairly conducted.

(5) The commission shall publish the result of the election and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the commission determines that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the commission determines that the operation of such district is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner hereinafter provided. In making such determination the commission shall give due regard and weight to the attitudes of the owners of lands lying within the defined boundaries, the number of landowners and qualified electors eligible to vote in the election who shall have voted, the proportion of the votes cast in the election in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the landowners of the proposed district, the probable expense of carrying on erosion control and other conservation operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determination set forth in section 22-2716, Idaho Code; provided however, the commission shall not have authority to determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the election upon the proposition of creation of the district shall have been cast in favor of the creation of such district.

(6) If the commission determines that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two (2) supervisors to act, with the three (3) supervisors elected as provided hereinafter, as the governing body of the

district. Such district shall be a governmental subdivision of this state and a public body corporate and politic, upon the taking of the following proceedings:

- (a) The two (2) appointed supervisors shall present to the secretary of state an application signed by them which shall set forth (and such application need contain no detail other than the mere recitals): (i) that a petition for the creation of the district was filed with the state soil and water conservation commission pursuant to the provisions of this chapter and that the proceedings specified in this chapter were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this chapter; and that the commission has appointed them as supervisors; (ii) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office; (iii) the term of office of each of the supervisors; (iv) the name which is proposed for the district; and (v) the location of the principal office of the supervisors of the district. The application shall be subscribed and sworn to by each of the said supervisors before an officer authorized by the laws of this state to take and certify oaths, who shall certify upon the application that he personally knows the supervisors and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence.
- (b) The application shall be accompanied by a statement by the state soil and water conservation commission, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued and hearing held as aforesaid; that the commission did duly determine that there is need, in the interest of the public health, safety and welfare, for a soil conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and an election held on the question of the creation of such district, and that the result of the election showed a sixty percent (60%) majority of the votes cast in the election to be in favor of the creation of the district; that thereafter the commission did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the commission.
- (c) The secretary of state shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other soil conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office.
- (d) If the secretary of state finds that the name proposed for the district is identical with that of any other soil conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the state soil and water conservation commission which shall thereupon submit to the secretary of state a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name free of such defects, the secretary of state shall record the

application and statement with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed and recorded, as herein provided, the district shall constitute a governmental subdivision of this state and a public body corporate and politic. The secretary of state shall make and issue to the said supervisors a certificate under the seal of the state, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the state soil and water conservation commission as aforesaid, but in no event shall they include any area included within the boundaries of another soil conservation district organized under the provisions of this chapter except as provided in section 22-2720, Idaho Code.

(7) After six (6) months shall have expired from the date of entry of a determination by the state soil and water conservation commission that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid, and action taken thereon in accordance with the provisions of this chapter.

(8) Petitions for including additional territory within an existing district may be filed with the state soil and water conservation commission and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for such inclusion. The commission shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this chapter for petitions to organize a district. Where the total number of landowners in the area proposed for inclusion is less than twenty-five (25), the petition may be filed when signed by a two-thirds ($\frac{2}{3}$) majority of the owners of such area, and in such case no election need be held. In elections upon petitions for such inclusion, all owners of land and qualified electors lying within the proposed additional area shall be eligible to vote.

(9) Incorporated cities, not already included within a district, may be included by presentation of a request of the district approved by the governing body along with a request of the city approved by the mayor and council, to the state soil and water conservation commission. The commission shall consider and act on such joint request at the earliest convenience. If the joint request is denied, the commission shall so notify the district and city in writing and state the reasons for such denial. After six (6) months shall have expired from the date of denial of such joint request, a subsequent joint request may again be made. If the joint request is approved, the commission shall then cause the necessary papers to be filed with the secretary of state. This shall include an amended legal description of the boundaries of the total district.

History.

1957, ch. 218, § 5, p. 476; am. 1973, ch. 164, § 1, p. 310; am. 1995, ch. 118, § 8, p. 417; am. 2010, ch. 279, § 4, p. 719.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 279, redesignated the subsections numerically; throughout the section, substituted "state soil and water conservation commission" for "state soil

conservation commission"; added the paragraph (6)(a) through (6)(d) designations; and in paragraph (6)(d), substituted "chapter" for "act."

22-2720. Consolidation of or deletion from and addition to new or existing districts. — (1) Petitions for consolidating two (2) or more existing districts or for deleting territory from one (1) or more existing districts and adding the deleted territory to one (1) or more existing districts or incorporating the deleted territory into a new district or districts may be filed with the state soil and water conservation commission on such forms as may be prescribed by the state soil and water conservation commission.

(2) The petitions provided for in subsection (1) of this section shall be signed by twenty-five (25) landowners in the area proposed to be consolidated or the area proposed to be deleted plus the district or districts to which it is to be added or the territory which is to be included in a new district or districts, as the case may be. Provided however, if two-thirds (2/3) of the landowners of all such territory total less than twenty-five (25), then such lesser number of signatures will suffice for the petition.

(3) Within thirty (30) days after receipt of such a petition, the state soil and water conservation commission shall cause due notice of hearing on the matter to be given in all of the areas concerned.

(4) At the close of the hearing, the state soil and water conservation commission shall make and record the following determinations:

(a) Whether or not, in the opinion of the commission, the proposal set forth by the petition would serve the public health, safety and welfare.

(b) Whether or not, in the opinion of the commission, the proposal set forth by the petition is administratively practicable and feasible.

(5) If either or both of the determinations made under subsection (4) of this section are in the negative, the matter is closed. Provided however, after six (6) months have expired from the date of such determination, a new petition may be filed involving substantially the same proposals.

(6) If both of the determinations made under subsection (4) of this section are in the affirmative and if the proposal involves the consolidation of two (2) or more existing districts or if the proposal involves the deletion of territory from one (1) or more districts and the addition of that territory to another existing district or districts, then the commission shall proceed to effect the change as per the commission's determinations hereinbefore referred to. The state soil and water conservation commission shall effect the change by filing with the secretary of state a sworn statement of a member of the commission stating:

(a) The name of the district or districts which are consolidated, if any;

(b) The name of the district or districts from which the territory is deleted or added, if any; and

(c) A description of the boundaries of the consolidated district or of the territory remaining in the district or districts deleted from and the district or districts added to, according to the commission's determination.

From and after the time of filing of such statement with the secretary of state, the changes will be effective. If the name of a district formed by the consolidation of two (2) or more existing districts differs from that of either of the consolidated districts, the secretary of state shall issue and record a new certificate of organization of said district.

(7) Within ten (10) days after the filing of a statement providing for the formation of a consolidated district as prescribed in subsection (6) of this section, the supervisors of each district involved in the consolidation shall meet and, from their number, shall designate a chairman of the consolidated district. Incumbent supervisors of districts involved in a consolidation may serve until any such supervisor's term expires. Any vacancy on the governing body of a district formed by consolidation shall not be filled until only five (5) supervisors, or seven (7) upon written request pursuant to section 22-2721, Idaho Code, remain on the governing body of such district. Thereafter, vacancies shall be filled consistent with procedures prescribed in section 22-2721, Idaho Code.

(8) A district formed by the consolidation of two (2) or more districts shall receive a sum not to exceed eight thousand five hundred dollars (\$8,500) for each district involved in the formation of the consolidated district for a period of three (3) years after the formation of such district. The maximum allocation of fifty thousand dollars (\$50,000) per district set forth in section 22-2727, Idaho Code, shall not apply to a district formed by consolidation for a period of three (3) years following the formation of such district. Upon expiration of the three (3) year time period, a district formed by consolidation shall be treated as one (1) district and shall be subject to all provisions of section 22-2727, Idaho Code.

(9) The office of any district supervisor is hereby declared to be vacant when, after the deletion of territory, such district supervisor is no longer a landowner within the district deleted from.

(10) If both of the determinations made under subsection (4) of this section are in the affirmative and if the proposal involves the addition of territory deleted from one (1) or more existing districts to other territory thus forming a new district, a referendum shall be held and other procedures followed as in cases involving the original formation of a district where no existing district is involved. In such a case, due notice shall be given in the area which may comprise the new district.

(11) If a new district is formed under the procedure prescribed in subsection (10) of this section, part of the area which is composed of an old district, the state soil and water conservation commission shall cause to be filed with the secretary of state a sworn statement of a member of the commission stating:

- (a) The name of the district or districts deleted from; and
- (b) A description of the boundaries of the territory remaining in the district or districts deleted from.

From and after the time of filing of such statement with the secretary of state, the change in the boundaries of the existing districts shall be effective.

History.

1957, ch. 218, § 6, p. 476; am. 2010, ch. 279, § 5, p. 719.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 279, throughout the section, substituted "state soil and water conservation commission" for "state soil conservation commission"; in the introductory paragraph in subsection (4), deleted "hereinbefore provided for" following "hearing"; in

the last sentence in the introductory paragraph in subsection (6), deleted "here referred to" following "change"; in paragraph (6)(c), deleted "hereinbefore referred to" from the end; and added subsections (7) and (8), redesignating the subsequent subsections accordingly.

22-2721. Election, appointment, qualifications and tenure of supervisors. — (1) The governing body of the district shall consist of five (5) supervisors, elected or appointed as provided in this chapter. Elections shall be conducted pursuant to the provisions of this section and the uniform district election law, chapter 14, title 34, Idaho Code. If at any time the supervisors of a district deem it necessary, they may request permission from the state soil and water conservation commission to increase the number of supervisors to seven (7). Upon receipt of such a request in writing, signed by all five (5) supervisors, stating a valid reason for such need, the commission shall grant permission. The additional supervisors shall then be appointed as outlined in this section until such time as regular district elections for two (2) supervisors in each district. At that time those districts having seven (7) supervisors shall then elect four (4) supervisors for four (4) year terms. The two (2) supervisors appointed by the district shall be persons who are by training and experience qualified to perform the specialized services which will be required of them in the performance of their duties. All supervisors shall be landowners or farmers of the district where they are elected or appointed and shall be registered to vote in the state of Idaho.

(2) Within thirty (30) days after the date of issuance by the secretary of state of a certificate of organization of a soil conservation district, nominating petitions may be filed with the state soil and water conservation commission to nominate candidates for supervisors of each district. The county clerk shall conduct the election for the district in compliance with chapter 14, title 34, Idaho Code, and shall be the election official for the district. The election official shall have authority to extend the time within which nominating petitions may be filed. Nominating petitions shall be filed with the secretary of the district, and no such nominating petition shall be accepted by the election official unless it shall be subscribed by not less than five (5) persons who are qualified electors owning land or residing within the boundaries of the district. The election official shall give due notice of an election to be held, subject to the provisions of section 34-106, Idaho Code, for the election of three (3) supervisors for the district. The names of all nominees on behalf of whom such nominating petitions have been filed within the time herein designated shall appear upon ballots, with directions to choose three (3) names to indicate the voter's preference. The three (3)

candidates who shall receive the largest number, respectively, of the votes cast in such election shall be the elected supervisors for such district.

(3) All elections in districts shall be conducted by the county clerk. Such election shall be held on the first Tuesday succeeding the first Monday of November in each even-numbered year. Such elections shall be in compliance with the provisions of chapter 14, title 34, Idaho Code, and shall be supervised and conducted by the county clerk. The cost of conducting such elections shall be borne by the county that conducted the election. The county clerk shall certify to the soil and water conservation district the names of the elected supervisors. The soil and water conservation district shall issue certificates of election to each elected supervisor so certified. The county clerk or county clerks of the county or counties in which the district is located shall conduct the election for the soil conservation district, and the county clerk must provide a ballot for the district election and must provide a process that allows only qualified electors of the district to vote in that district's election.

(4) In any election for supervisor, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that the number of qualified candidates who have been nominated is equal to the number of supervisors to be elected, it shall not be necessary for the candidates to stand for election, and the board of supervisors shall declare such candidates elected as supervisors, and the soil and water conservation district shall immediately make and deliver to such persons certificates of election.

(5) The supervisors shall designate a chairman and may, from time to time, change such designation. The term of office of each supervisor shall be four (4) years commencing on the first day of January next following election, except that the two (2) supervisors who are first appointed shall be designated to serve for terms of two (2) years. A supervisor shall hold office until a qualified successor has been elected or appointed. Vacancies shall be filled for the unexpired term. The selection of successors to fill an unexpired term, or for a full term shall be made by a vote of the majority of the supervisors duly qualified and acting at the time the vacancy shall arise and the supervisors shall certify the name of the appointed supervisor to the state soil and water conservation commission. The soil conservation district shall issue a certificate of such appointment.

(6) A majority of the supervisors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A supervisor shall be entitled to expenses, including travel expense, necessarily incurred in the discharge of duties. A supervisor shall receive no compensation for services from regular district funds, county funds authorized in section 22-2726, Idaho Code, or state funds authorized in section 22-2727, Idaho Code.

(7) In the event the district has a special project, approved by the state soil and water conservation commission, making project funds available from federal or other sources, a supervisor may receive compensation not to exceed thirty-five dollars (\$35.00) per day plus actual and necessary expenses from project funds for services directly related to the project.

(8) The supervisors may employ a secretary, technical experts, and such other officers, agents, and employees, permanent and temporary as they

may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the attorney general of the state for such legal services as they may require or may employ their own counsel and legal staff. The supervisors may delegate to their chairman, to one (1) or more supervisors, or to one (1) or more agents, or employees, such powers and duties as they may deem proper. The supervisors shall furnish to the state soil and water conservation commission, upon request, copies of such ordinances, rules, orders, contracts, forms and other documents as they shall adopt or employ, and such other information concerning the supervisors' activities as the commission may require in the performance of the commission's duties under this chapter.

(9) The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; they shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, and orders issued or adopted; and shall provide for independent financial audits in accordance with the provisions of section 67-450B, Idaho Code. Supervisors shall be subject to recall in accordance with the provisions of chapter 17, title 34, Idaho Code.

(10) The supervisors may invite the legislative body of a municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

History.

1957, ch. 218, § 7, p. 476; am. 1963, ch. 30, § 1, p. 171; am. 1973, ch. 59, § 1, p. 97; am. 1978, ch. 280, § 1, p. 679; am. 1986, ch. 179, § 1, p. 469; am. 1990, ch. 3, § 1, p. 4; am. 1995, ch. 118, § 9, p. 417; am. 1995, ch. 256,

§ 1, p. 837; am. 1997, ch. 180, § 4, p. 498; am. 1999, ch. 78, § 1, p. 222; am. 2000, ch. 4, § 2, p. 5; am. 2008, ch. 383, § 1, p. 1053; am. 2009, ch. 341, § 4, p. 993; am. 2010, ch. 279, § 7, p. 719; am. 2011, ch. 11, § 2, p. 24; am. 2012, ch. 211, § 1, p. 571.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 279, redesignated the subsections numerically; substituted "state soil and water conservation commission" for "state soil conservation commission" throughout the section; added "and shall be registered to vote in the state of Idaho" at the end of subsection (1); and rewrote subsection (11).

The 2011 amendment, by ch. 11, deleted "subsection (5) of" following "appointed as outlined" in the fifth sentence of subsection (1); deleted former subsections (5) and (6) which read: "(5) In any election for supervisors of a soil conservation district, if after the expiration of the date for filing written nominations it appears that only one (1) qualified candidate has been nominated for each position to be filled and no declaration of intent has been filed by a write-in candidate as provided in subsection (6) of this section, it shall not be necessary to hold an election, and the county clerk shall, no later than seven (7)

days before the scheduled date of the election, declare such candidate elected as supervisor, and the state soil and water conservation commission shall immediately make and deliver to such person a certificate of election.

"(6) No write-in vote for supervisor shall be counted unless a declaration of intent has been filed with the county clerk indicating that the person making the declaration desires the office and is legally qualified to assume the duties of supervisor if elected as a write-in candidate. The declaration of intent shall be filed not later than twenty-five (25) days before the day of election."

and redesignated former subsections (7) to (12) as present subsections (5) to (10).

The 2012 amendment, by ch. 211, substituted "district" for "commission" in the next-to-last sentence in subsection (1); in subsection (2), inserted "in compliance with chapter 14, title 34, Idaho Code" in the second sentence and "Nominating petitions shall be filed with the secretary of the district, and" in the

fourth sentence, and deleted the former last sentence, which read, "The commission shall pay all the expenses of such election, which shall be supervised and conducted by the election official"; and substituted "district" for "commission" twice in subsection (3) and once in subsection (4).

Effective Dates.

Section 27 of S.L. 2011, ch. 11 declared an emergency retroactively to January 1, 2011. Approved February 23, 2011.

Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

22-2723. Cooperation between districts. — The supervisors of any two (2) or more districts may cooperate with one another in the exercise of any or all powers conferred in this chapter.

History.

1957, ch. 218, § 9, p. 476; am. 2010, ch. 279, § 8, p. 719.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 279, deleted "organized under the provisions of this act"

following "districts" and substituted "chapter" for "act."

22-2724. State agencies to cooperate. — Agencies of this state which shall have jurisdiction over, or be charged with the administration of, any state-owned lands, and of any county, or other governmental subdivision of the state, which shall have jurisdiction over, or charged with the administration of, any county-owned or other publicly owned lands, lying within the boundaries of any district shall cooperate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this chapter. The supervisors of such district shall be given free access to enter and perform work upon such publicly owned lands.

History.

1957, ch. 218, § 10, p. 476; am. 2010, ch. 279, § 9, p. 719.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 279, in the first sentence, deleted "organized hereunder"

following "district" and substituted "chapter" for "act."

22-2725. Discontinuance of districts. — (1) At any time after five (5) years after the organization of a district under the provisions of this chapter, any twenty-five (25) owners of land lying within the boundaries of such district may file a petition with the state soil and water conservation commission requesting that the operations of the district be terminated and the existence of the district discontinued. The commission may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within sixty (60) days after such petition has been received by the commission, it shall give due notice to the county clerk of the holding of an election, subject to the provisions of section 34-106, Idaho Code, and the county clerk shall supervise the election, and

issue appropriate regulations governing such election as are consistent with chapter 14, title 34, Idaho Code, the question to be submitted by ballots upon which the words "For terminating the existence of the (name of the soil conservation district to be here inserted)" shall appear, with a square before each proposition and a direction to mark the ballot as the voter may favor or oppose discontinuance of such district. All qualified electors who reside within the proposed district shall be eligible to vote in said election. No informalities in the conduct of the election or in any matters relating thereto shall invalidate the election or the result thereof if notice thereof shall have been given substantially as herein provided and the election shall have been fairly conducted.

(2) The commission shall publish the result of the election and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the commission determines that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the commission determines that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the commission shall give due regard and weight to the attitudes of the owners of lands lying within the district, the number of residents eligible to vote in the election who shall have voted, the proportion of the votes cast in the election in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the landowners of the district, the probable expense of carrying on such erosion-control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in section 22-2716, Idaho Code, provided however, that the commission shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the election shall have been cast in favor of the continuance of such district.

(3) Upon receipt from the state soil and water conservation commission of a certificate that the commission has determined that the continued operation of the district is not administratively practicable and feasible pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the state treasury. The supervisors shall thereupon file an application duly verified, with the secretary of state for the discontinuance of such district, and shall transmit with such application the certificate of the state soil and water conservation commission setting forth the determination of the commission that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided and shall set forth a full accounting of such properties and proceeds of the sale.

The secretary of state shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

(4) Upon issuance of a certificate of dissolution under the provisions of this section, all contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The state soil and water conservation commission shall be substituted for the district or supervisors as party to such contracts.

(5) The state soil and water conservation commission shall not entertain petitions for the discontinuance of any district nor conduct elections upon such petitions nor make determinations pursuant to such petitions in accordance with the provisions of this chapter, more often than once in five (5) years.

History. 1957, ch. 218, § 11, p. 476; am. 1995, ch. 118, § 10, p. 417; am. 2009, ch. 341, § 5, p. 993; am. 2010, ch. 279, § 11, p. 719.

STATUTORY NOTES

Amendments. The 2010 amendment, by ch. 279, added the subsection designations; throughout the section, substituted “state soil and water conservation commission” for “state soil conservation commission”; and in the first sentence in subsection (1), substituted “requesting” for “praying.”

22-2727. Allocation of funds to districts. — (1) A public hearing shall be held by the state soil and water conservation commission on or before June 15 of each year and twenty (20) days’ written notice of such hearing shall be given to each soil conservation district and to all other persons requesting notice of such hearing. At the hearing the state soil and water conservation commission shall consider the needs of each soil conservation district and shall base its request for state funds for the soil conservation districts upon the budgets, budget requests, district programs and work plans, and work load analysis of the various soil conservation districts.

(2) All funds appropriated by the state for the various soil conservation districts shall be appropriated to the Idaho state soil and water conservation commission and shall be allocated by the commission equally to the various soil conservation districts on the basis of the criteria established in subsection (1) of this section.

(3) Funds appropriated to the state soil and water conservation commission for distribution to soil conservation districts shall be allocated by the commission equally to the various soil conservation districts in a sum not to exceed eight thousand five hundred dollars (\$8,500) per district. All funds appropriated to the state soil and water conservation commission for distribution to soil conservation districts in excess of eight thousand five hundred dollars (\$8,500) per district shall be allocated by the commission to the various soil conservation districts in a sum not to exceed twice the amount of funds or services allocated to each district by the county commissioners in the previous fiscal year and funds or services allocated to

each district by authorized officials or other local units of government or organizations in the previous fiscal year, provided that any such allocation by the commission shall not exceed fifty thousand dollars (\$50,000) to any one (1) district in a fiscal year.

(4) The state soil and water conservation commission shall adopt rules necessary to carry out the purposes of this section.

History.

I.C., § 22-2727, as added by 1969, ch. 217, § 2, p. 711; am. 1984, ch. 16, § 2, p. 18; am. 1990, ch. 358, § 2, p. 967; am. 1991, ch. 80, § 1, p. 181; am. 2010, ch. 279, § 12, p. 719.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 279, added the subsection designations; throughout the section, substituted “state soil and water conservation commission” for “Idaho soil conservation commission”; in subsection (2), inserted “by the commission”; and in subsection (3), in the first and last sentence, inserted “by the commission” and substituted “eight thousand five hundred dollars (\$8,500)” for “five thousand dollars (\$5,000)” and added the proviso.

22-2730. Resource conservation and rangeland development fund created. — (1) There is hereby created in the state treasury a fund to be known as the Idaho resource conservation and rangeland development fund, which shall consist of all moneys which may be appropriated to it by the legislature or made available to it from federal, private or other sources. The state treasurer is directed to invest all unobligated moneys in the fund. All interest and other income accruing from such investments shall accrue to the fund. The state soil and water conservation commission may expend from the fund such sums as it shall deem necessary for any of the conservation improvements, projects and programs provided for under this chapter under such terms and conditions provided for in the commission’s rules and the water quality program for agriculture.

(2) The state soil and water conservation commission shall establish a priority list for conservation improvements, projects and the water quality program for agriculture. The priority list shall be used as the method for allocation of funds loaned under this chapter.

History.

I.C., § 22-2730, as added by 1985, ch. 116, § 1, p. 239; am. 1992, ch. 270, § 4, p. 836; am. 1999, ch. 137, § 3, p. 386; am. 2003, ch. 107, § 7, p. 334; am. 2010, ch. 279, § 13, p. 719.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 279, in paragraphs (1) and (2), substituted “state soil and water conservation commission” for “state soil conservation commission”.

22-2731. Allocation of fund. — The Idaho resource conservation and rangeland development fund shall be allocated for use by the state soil and water conservation commission:

(1) To eligible applicants for conservation improvements which it deems

to be “in the public interest” in such amounts as are necessary for the implementation of conservation measures identified in a conservation plan;

(2) To eligible applicants for the purpose of conservation improvements on rangelands, agricultural lands and riparian lands, which will provide environmental enhancement to soil, water, wildlife and related resources;

(3) For the purpose of implementing conservation improvements, projects and the water quality program for agriculture.

History.

I.C., § 22-2731, as added by 1985, ch. 116, § 1, p. 239; am. 1992, ch. 270, § 5, p. 836; am.

1999, ch. 137, § 4, p. 386; am. 2003, ch. 107, § 8, p. 334; am. 2010, ch. 279, § 14, p. 719.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 279, in the introductory paragraph, added “by the state soil and water conservation commission”; and

in subsections (1) through (3), deleted “By the state soil conservation commission” or similar language from the beginning.

22-2732. Loans from fund — Application — Approval — Repayment. — (1) Eligible applicants may file an application with the local soil conservation district or the state soil and water conservation commission for a loan from the fund for the purpose of financing conservation improvement cost. Such application shall be filed in such a manner and shall be in such form, and be accompanied by such information as may be prescribed by the commission. Any such application filed with the district or the commission under the provisions of this chapter shall:

- (a) Describe the nature and purposes of the improvements or projects;
- (b) Set forth or be accompanied by a conservation plan approved by the local soil conservation district or the commission that identifies the conservation improvements, or projects, together with such technical and economic feasibility data and estimated costs as may be required by the commission;
- (c) State whether money other than that for which application is made under this chapter will be used for improvement costs, and whether such money is available or has been sought for this purpose;
- (d) Show that the applicant holds or can acquire title to all lands or has necessary easements and rights-of-way for the improvements; and
- (e) Show the proposed project is feasible from a technical standpoint and economically justified.

(2) The local soil conservation districts and the commission shall keep each other informed of applications received. Within sixty (60) days of receipt of an application, the local soil conservation district or the commission shall review and evaluate, and if it deems necessary, investigate aspects of the proposed improvements. As part of such investigation, the district or the commission shall determine whether the plan for development of the conservation improvements is satisfactory. If the district or the commission determines the plan is unsatisfactory, it shall return the application to the applicant and may make such recommendations to the applicant as are considered necessary to make the plan satisfactory. If the

district or the commission determines the plan and application are satisfactory, it shall be considered for funding.

(3) The commission may approve a loan for conservation improvements if after review, evaluation and investigation if necessary, it finds that:

- (a) The applicant is qualified and responsible;
- (b) There is reasonable assurance that the borrower can repay the loan; and
- (c) That money in the resource conservation and rangeland development fund is available for the loan.

(4) If the commission approves a loan, the applicant shall execute a promissory note for repayment to the account of money loaned therefrom, together with interest not to exceed six percent (6%) annually as determined by the commission. The note shall further provide that repayment of the loan, together with interest thereon, shall commence not later than two (2) full years from the date the note is signed. Repayment shall be completed within the time period specified by the commission not to exceed fifteen (15) years, except that the commission may extend the time for making repayment in event of emergency or hardship. Such agreement shall also provide for such assurance of, and security for, repayment of the loan as are considered necessary by the commission.

(5) Upon approval of the loan and securing all necessary documents, the commission will make available, in approved form, project or contract funding.

(6) If an applicant fails to comply with the repayment contract, the interest in the improvement may be conveyed to a successor upon approval by the commission, which may contract with the qualified successor in interest of the original obligor for repayment of the loan, together with interest thereon, and for succession to its rights and obligation in any contract with the commission.

History.

I.C., § 22-2732, as added by 1985, ch. 116, § 1, p. 239; am. 1992, ch. 270, § 6, p. 836; am.

1999, ch. 62, § 1, p. 164; am. 1999, ch. 137, § 5, p. 386; am. 2010, ch. 279, § 15, p. 719.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 279, redesignated the subsections numerically; in the first sentence in subsection (1), substituted "state soil and water conservation commission" for

"state soil conservation commission"; in the last sentence in the introductory paragraph in subsection (1) and in paragraph (1)(c), substituted "chapter" for "act"; and added the first sentence in subsection (2).

22-2733. Grants from state soil and water conservation commission general fund — Application — Approval — Grant agreement. —

(1) Eligible applicants or participants may file an application with the local soil conservation district or the state soil and water conservation commission for a grant from the state soil and water conservation commission general fund for the purpose of financing conservation improvements, projects and implementation of the water quality program for agriculture. Such application shall be filed in such a manner and shall be in such form,

and be accompanied by such information as may be prescribed by the commission; provided however, any such application filed with the district or the commission under the provisions of this section shall:

- (a) Describe the nature and purpose of the improvements or conservation plan implementation project;
- (b) Set forth or be accompanied by an improvement project plan approved by the local soil conservation district or the commission that identifies the practices to be applied, together with such technical and economic feasibility data and estimated costs as may be required by the commission;
- (c) State whether money other than that for which application is made under this section will be used for improvement project or conservation plan implementation costs, and whether such money is available or has been sought for this purpose; and
- (d) Show that the applicant or participant holds or can acquire title to all lands or has necessary easements and rights-of-way to implement the project plan.

(2) The commission and local soil conservation district will keep each other informed of grant applications received. Within thirty (30) days of receipt of an application, the local soil conservation district or the commission shall review and evaluate and, if deemed necessary, investigate all aspects of the proposed improvement, project or conservation plan. As part of such investigation, the district or the commission shall determine whether the project plan is satisfactory. If the district or the commission determines that the plan is unsatisfactory, it shall return the application to the applicant or participant and the district or the commission may make such recommendations to the applicant or participant as are considered necessary to make the plan satisfactory. If the commission determines either the plan or a plan revised pursuant to recommendation of the district or commission is satisfactory, it shall be considered for funding.

(3) The commission may approve a grant if after review, evaluation and investigation if necessary, it finds that:

- (a) The applicant or participant is qualified and responsible;
- (b) The improvement, project or conservation plan demonstrates public benefits; and
- (c) That money in the state soil and water conservation commission general fund is available for the grant.

(4) If the commission approves a grant, the applicant or participant shall enter into an agreement covering the grant offer and acceptance of the grant for implementing the improvement, project or conservation plan. The agreement shall be improvement, project or conservation plan specific. The terms and conditions shall be those specified by the commission.

(5) Upon approval of the grant and securing all necessary documents, the commission will make available, in the approved form, project or contract funding.

History. 2003, ch. 107, § 9, p. 334; am. 2010, ch. 279, I.C., § 22-2733, as added by 1992, ch. 270, § 16, p. 719.
§ 7, p. 839; am. 1999, ch. 137, § 6, p. 386; am.

STATUTORY NOTES

Amendments. substituted “state soil and water conservation commission” for “state soil conservation commission”.
The 2010 amendment, by ch. 279, in the section heading and throughout the section,

22-2734. Cost-share from state soil and water conservation commission general fund — Application — Approval. — (1) Eligible applicants or participants may file an application with the local soil conservation district or the state soil and water conservation commission for a cost-share contract or project from the state soil and water conservation commission general fund for the purpose of financing agricultural, grazing or other conservation improvements, projects or implementation of the water quality program for agriculture. Such application shall be filed in such a manner and shall be in such form and be accompanied by such information as may be prescribed by the commission; provided however, any such application filed with the district or the commission under the provisions of this section shall:

- (a) Describe the nature and purposes of the improvements and projects requiring cost-sharing;
- (b) Set forth or be accompanied by a plan that identifies the conservation improvements or projects, together with such technical and economic feasibility data and estimated costs as may be required by the commission;
- (c) State whether money other than that for which application is made under this section will be used for costs, and whether such money is available or has been sought for this purpose; and
- (d) Show the proposed project is feasible from a technical standpoint and is economically justified.

(2) The commission and the local soil conservation district will keep each other informed of cost-share applications received. Within thirty (30) days of receipt of an application, the local soil conservation district or the commission shall review and evaluate and, if deemed necessary, investigate all aspects of the proposed contract or project. As part of such investigation, the district or the commission shall determine whether the plan for development of the conservation improvements or projects is satisfactory. If the district or the commission determines the plan is unsatisfactory, it shall return the application to the applicant or participant and the district or the commission may make such recommendations to the applicant or participant as are considered necessary to make the application satisfactory. When the commission determines either the application or an application revised pursuant to recommendation of the district or commission is satisfactory, it shall be considered for funding.

(3) The commission may approve a cost-share contract to an applicant or participant for conservation projects and improvements if, after review, evaluation and investigation, it finds that:

- (a) The applicant or participant is qualified and responsible;
- (b) The conservation improvement or project demonstrates public benefit;
- (c) There is reasonable assurance that the applicant or participant will adhere to contract terms; and
- (d) Money is available in the state soil and water conservation commission general fund for cost-share.

(4) Upon approval of the cost-share contract or cost-share grant, and securing of all necessary documents, the commission will make funding available.

History.

I.C., § 22-2734, as added by 1999, ch. 137, § 7, p. 386; am. 2003, ch. 107, § 10, p. 334; am. 2010, ch. 279, § 17, p. 719.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 279, in the section heading and throughout the section, substituted “state soil and water conservation commission” for “state soil conservation commission”.

22-2735. Payments by the state soil and water conservation commission — Rules — Approval of attorney general — Audit of payments. — (1) The commission may make payments not to exceed the estimated reasonable cost of an eligible improvement, project or plan.

(2) The commission may, in the name of the state of Idaho, enter into contracts with approved applicants, and any such approved applicants may enter into a contract with the commission concerning eligible improvements, projects or plans. Any such contract may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following provisions:

- (a) An estimate of the reasonable cost of the improvements, projects or plans as determined by the commission;
- (b) The terms under which the commission may unilaterally terminate the contract and/or seek repayment from the applicant of sums already paid pursuant to the contract for noncompliance by the applicant with the terms and conditions of the contract and the provisions of this chapter;
- (c) An agreement by the applicant binding for the life of the eligible improvements, projects or plans:
 - (i) To develop water quality plans for landowners and provide payments to landowners for installation of best management practices;
 - (ii) To determine payment rates in conjunction with the commission for best management practices;
 - (iii) To establish a method for administration and provisions for technical assistance to landowners in conjunction with the commission;
 - (iv) To allow the state to make payments up to the estimated reasonable cost for best management practices installation, technical assistance and project administration of an eligible project;
 - (v) To develop and to secure the approval of the commission of plans for operation of the eligible project;
 - (vi) To ensure that the local matching share of the cost is provided as applicable;

(vii) To assure an adequate level of landowner participation and application of best management practices to ensure water quality goals are met.

(3) The commission may enter into contracts to provide technical assistance to applicants that have entered agreements pursuant to this chapter. Any such contract may include such provisions agreed upon by the parties thereto and shall include, in substance, the following provisions:

- (a) An estimate of the reasonable cost of technical assistance;
- (b) The terms under which the commission may unilaterally terminate the contract, and/or seek repayment of sums paid pursuant to the contract, for noncompliance by the applicants with the terms and conditions of the contract, the provisions of this chapter, or rules adopted pursuant thereto.

(4) The commission may enter into contracts and establish procedures to be followed in applying for eligible improvements, projects and plans herein authorized as shall be necessary for the effective administration of the water quality program for agriculture.

(5) All contracts entered into pursuant to this section shall be subject to approval by the attorney general as to form. All payments by the state pursuant to such contracts shall be made after audit and upon warrant as provided by law on vouchers approved by the chairman and the administrator of the commission.

(6) All grant agreements and contracts previously entered into with the state board of health and welfare, soil conservation districts and the commission pursuant to section 39-3627, Idaho Code, for payments and administration are now to be administered and payments implemented solely by the commission.

History.

I.C., § 22-2735, as added by 1999, ch. 137,
§ 8, p. 336; am. 2010, ch. 279, § 18, p. 719.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 279, in the section heading, substituted “state soil and water conservation commission” for “state soil conservation commission”; in paragraph (2)(b), substituted “applicant” for “applica-

tion”; and in the last sentence in subsection (5), substituted “approved by the chairman and the administrator of the commission” for “approved by the director of the department of agriculture.”

CHAPTER 28

HONEY INDUSTRY

SECTION.

- 22-2802. Declaration of policy and purpose of chapter.
- 22-2803. Definitions.
- 22-2804. Commission, members, appointment and compensation.
- 22-2807. Duties.
- 22-2808. Rules, standards, definitions.

SECTION.

- 22-2809. Levy and collection of taxes — Change of tax by referendum — Violations — Penalty.
- 22-2810. Sampling and analysis.
- 22-2811. Penalties for violations.
- 22-2812. “Stop sale, use, or removal” orders.
- 22-2813. Payment of expenses and costs.

SECTION.

22-2814. Crediting of funds.

22-2815. Publication of registered beekeepers.

22-2802. Declaration of policy and purpose of chapter. — It is hereby declared, as a matter of legislative determination, that the honey industry of Idaho is in dire need of concentrated state and national advertising and promotion to increase the consumption of honey; that other states are promulgating advertising and promotion campaigns for the betterment of the honey industry; that honey is an essential food and its use should be placed in name and fact before the people of America; that in the interest of public welfare and general prosperity of the people of the state of Idaho, the honey industry and beekeeping in general should be maintained and encouraged so that the many food values and quality of honey and the many pollinating values of the domesticated honey bees may be better understood, protected and greater use thereof made.

History.

1949, ch. 147, § 2, p. 301; am. 2012, ch. 123, § 1, p. 342.

STATUTORY NOTES**Amendments.**

The 2012 amendment, by ch. 123, substituted "people of America" for "housewives of

America" near the middle of the section and inserted "air quality" and "protected" near the end of the section.

22-2803. Definitions. — Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context:

(1) "Commission" means the Idaho honey advertising commission.

(2) "Honey producer" or "beekeeper" means a person, firm or corporation engaged in the art of raising, harboring, keeping or breeding domesticated honey bees either for the purpose of gathering honey or the production of queens and/or packaged bees.

(3) "Honey by-products" means items using honey as a base such as creamed honey, whipped honey, or the like.

(4) "Packer" means any honey producer or beekeeper or person who processes and packs honey for commercial retail sales.

(5) "Person" includes an individual, partnership, corporation, firm, association and agent.

(6) "Director" means the director of the Idaho state department of agriculture or his designated representative.

(7) "Official sample" means a sample of honey taken by the director or an authorized agent in accordance with the provisions of section 22-2810, Idaho Code.

History.

1949, ch. 147, § 3, p. 301; am. 2012, ch. 123, § 2, p. 342.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 123, substituted “this chapter” for “this act” in the intro-

ductory paragraph and added subsections (4) through (7).

22-2804. Commission, members, appointment and compensation.

— There is hereby created and established in the department of agriculture an Idaho honey advertising commission to be known and designated as such, and shall be composed of the director of the department and three (3) members, who shall be practical honey producers or beekeepers, appointed by the governor, at the recommendation of a representative group of beekeepers of the state of Idaho. Each member so appointed shall be a resident citizen of the state of Idaho and from the district from which appointed, for a period of five (5) years prior to his appointment, and shall have had active experience in raising honey bees and each member shall have derived the major portion of his income from the production and sale of honey. One (1) member shall be chosen from the district north of the Salmon River; one (1) from the district south of the Salmon River and west of a north-south line bisecting the city of Shoshone and extending from the south boundary of the state of Idaho to the Salmon River; one (1) from the district south of the Salmon River and east of a north-south line bisecting the city of Shoshone and extending from the south boundary of the state of Idaho to the Salmon River. Commission members shall be appointed and serve for a term of three (3) years and until their respective successors are appointed and qualified. The commission shall elect its chairman.

The chairman of the commission may delegate the function of the honey advertising commission to an executive secretary whose function will be subject to the approval of the honey advertising commission. The executive secretary must be a member of the Idaho honey industry association, inc., or its successor organization but need not be a member of the honey advertising commission.

A majority of the members of said commission shall constitute a quorum for the transaction of all business and the carrying out of the duties of said commission. Before entering on the discharge of their duties as members of said commission, each member shall take and subscribe to the oath of office prescribed by the statutes of Idaho.

Each member of the commission shall be compensated as provided by section 59-509(n), Idaho Code. The commission shall meet regularly once each fiscal year at a date established by said commission in its designated business office, and it shall fix the time and place of special meetings as may be deemed necessary by the chairman of the commission.

History.

1949, ch. 147, § 4, p. 301; am. 1974, ch. 13, § 5, p. 138; am. 1974, ch. 142, § 1, p. 1356;

am. 1980, ch. 247, § 11, p. 582; am. 1990, ch. 414, § 3, p. 1148; am. 2013, ch. 81, § 1, p. 200.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 81, substi-

tuted “59-509(n)” for “59-509(d)” in the last paragraph.

22-2807. Duties. — The commission shall set honey quality, identity and labeling standards by rule, plan and conduct a campaign for honey and honey by-product advertising, publicity, merchandising, sales promotion and research, including bee research, and public education of beekeeping and honey production, by contracting with a service of the hereinabove mentioned, or jointly with any university or other state agency or states of the United States and its territories, or individually.

History.

1949, ch. 147, § 7, p. 301; am. 2006, ch. 87, § 1, p. 257; am. 2012, ch. 123, § 3, p. 342.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 123, inserted “set honey quality, identity and labeling standards by rule” near the beginning, “and public

education of beekeeping and honey production” near the middle, and “agency” near the end.

22-2808. Rules, standards, definitions. — The commission is hereby charged with the enforcement of this chapter, and after due publicity and due public hearing is empowered to promulgate and adopt such reasonable rules as may be necessary to carry into effect the full intent and meaning of this chapter, including the establishment of fees for services. The commission is hereby empowered to adopt rules establishing definitions for honey including establishing standards of identity, quality and labeling and such other rules as may be necessary for the enforcement of any provision of this chapter. In establishing standards of identity, quality and labeling the commission shall give consideration to any definitions and standards used by a federal agency, another state or an organization administering a regional, multi-regional, national or international agreement on honey.

History.

I.C., § 22-2808, as added by 2012, ch. 123, § 4, p. 342.

STATUTORY NOTES

Compiler's Notes.

Former § 22-2808 was amended and redes-

igned as § 22-2809 by S.L. 2012, ch. 123, § 5, effective July 1, 2012.

22-2809. Levy and collection of taxes — Change of tax by referendum — Violations — Penalty. — (a) There is hereby levied and imposed upon each colony or hive of bees within the state of Idaho on July 1 of each year a continuing annual tax of five cents (5¢) per hive or colony of bees beginning in the year 1970 for the purpose of carrying out the provisions of this chapter. Hobbyist beekeepers, as defined in chapter 25,

title 22, Idaho Code, are exempt from taxation under this section. Provided however, that any hobbyist beekeeper who desires to support the efforts of the commission, as set forth in section 22-2807, Idaho Code, and desires to be included in registration lists distributed as authorized under section 22-2815, Idaho Code, may register with the commission for that purpose by remitting an annual registration fee of ten dollars (\$10.00).

(b) The tax may be decreased to not less than three cents (3¢) per hive or colony per year or it may be increased to not more than ten cents (10¢) per hive or colony per year, if approved by a majority of the beekeepers voting in a referendum held for the purpose of determining whether such levy of the tax shall or shall not be changed. If the levy of the tax is changed, the levy of the tax will continue annually at the changed rate until again changed by another referendum. Any resident of Idaho who is a registered Idaho beekeeper with the department of agriculture may vote at such referendum. Any referendum held for the purpose of changing the levy of such tax shall be held at the annual meeting of the Idaho honey industry association or any successor organization to this group.

(c) Notice of the tax provided for in this section shall be mailed no later than June 1 and the tax shall be due and payable on or before July 1 of each year, and it shall be collected by the Idaho department of agriculture and shall forthwith be paid over by the Idaho department of agriculture to the Idaho honey advertising fund.

(d) Said tax shall be a lien upon all apicultural products, equipment, bees and property of the person owning or controlling such bees and shall be prior to all other liens or encumbrances except liens which are declared prior by operation of the statutes of this state.

History.

1970, ch. 46, § 1, p. 95; am. 1991, ch. 225,

§ 1, p. 537; am. 2006, ch. 87, § 2, p. 257; am. and redesi. 2012, ch. 123, § 5, p. 342.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 123, redesignated the section from § 22-2808 and deleted former subsections (e) and (f), which addressed the promulgation of rules to enforce this section and violations of those rules or the provisions of this section.

Compiler's Notes.

This section was formerly compiled as § 22-2808.

Former § 22-2809 was amended and redesignated as § 22-2813 by S.L. 2012, ch. 123, § 9, effective July 1, 2012.

22-2810. Sampling and analysis. — (1) For the purpose of enforcement of this chapter, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees duly designated by the director or commission upon presenting appropriate credentials, to the owner, operator, or agent in charge, are authorized upon written complaint:

(a) To enter, during normal business hours, any factory, warehouse, or establishment within the state in which honey is processed, packed, or held for distribution for retail sales, or to enter any vehicle being used to transport or hold such honey, and sample such honey that is packaged and labeled for retail sale.

(b) To inspect at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein, related to retail sales. The inspection may include the verification of only such records, and production and control procedures as may be necessary to determine compliance with the good manufacturing practice rules established under the provisions of this chapter. Each inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

(2) Sampling and analysis shall be conducted in accordance with methods prescribed in rules, or in accordance with other generally recognized methods.

(3) The director or commission, in determining for administrative purposes whether a honey is adulterated, shall be guided by the official sample as defined in subsection (7) of section 22-2803, Idaho Code, and obtained and analyzed as provided for in this section.

(4) If the owner of any factory, warehouse, or establishment described in subsection (1) of this section, or authorized agent, refuses to admit the director, commission or an authorized agent to inspect in accordance with subsections (1) and (5) of this section, the director or commission is authorized to obtain from any state court of competent jurisdiction a warrant directing such owner or agent to submit the premises described in such warrant to inspection.

(5) For the enforcement of this chapter, the director, commission or a duly authorized agent is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine and make copies of records relating to distribution of honey packaged and labeled for retail sale to the public.

(6) The results of all analyses of official samples shall be forwarded by the director or commission to the packer and to the purchaser or retailer. When the inspection and analysis of an official sample indicate the honey has been adulterated or mislabeled, and upon request by the packer or purchaser or retailer within thirty (30) days following the receipt of the analysis, the director or commission shall furnish to the packer or purchaser or retailer a portion of the sample concerned.

History.

I.C., § 22-2810, as added by 2012, ch. 123,
§ 6, p. 342.

STATUTORY NOTES

Compiler's Notes.

Former § 22-2810 was amended and redesignated as § 22-2814 by S.L. 2012, ch. 123, § 10, effective July 1, 2012.

22-2811. Penalties for violations. — (1) Any person who violates any provision of this chapter, or of the rules promulgated hereunder for carrying out the provisions of this chapter, or who fails or refuses to comply with any

requirements herein specified, or who interferes with the department, its agents or employees, in the execution, or on account of the execution of its or their duties under this chapter or rules promulgated hereunder, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than three thousand dollars (\$3,000) or be imprisoned in a county jail for not more than twelve (12) months or be subject to both such fine and imprisonment.

(2) Any person who violates or fails to comply with any of the provisions of this chapter or any rules promulgated hereunder may be assessed a civil penalty by the department or its duly authorized agent of not more than ten thousand dollars (\$10,000) for each offense and shall be liable for reasonable attorney's fees.

(a) Assessment of a civil penalty may be made in conjunction with any other department administrative action.

(b) No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act.

(c) If the department is unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court.

(d) Any person against whom the department has assessed a civil penalty under the provisions of this section may, within thirty (30) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred.

(e) All civil penalties collected pursuant to this section shall be remitted to the commission.

(3) Nothing in this chapter shall be construed as requiring the commission to report minor violations for prosecution when it believes that the public interest will be best served by suitable warnings or other administrative action.

History.

I.C., § 22-2811, as added by 2012, ch. 123,
§ 7, p. 342.

STATUTORY NOTES

Compiler's Notes.

Former § 22-2811 was amended and redes-

igned as § 22-2815 by S.L. 2012, ch. 123,
§ 11, effective July 1, 2012.

22-2812. "Stop sale, use, or removal" orders. — (1) In the event the department finds that honey is being offered for sale in violation of this chapter or rules promulgated under this chapter, the department may issue and enforce a written or printed "stop sale, use, or removal" order to the distributor, owner or custodian of the honey and hold the honey, or order it held, at a designated place until the law has been complied with and the honey is released in writing by the department, or the violation has been otherwise legally disposed of by written authority. Unless the department

grants a written extension, the owner or custodian of any honey that has been issued a “stop sale, use, or removal” order shall remedy the violation within thirty (30) days. The department shall release the honey so withdrawn when the requirements of this chapter have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

(2) Any lot of honey not in compliance with the provisions of this chapter, or rules promulgated under this chapter, shall be subject to seizure on complaint of the commission to a court of competent jurisdiction in the area in which said honey is located. In the event the court finds the said honey to be in violation of the provisions of this chapter and orders the condemnation of said honey, it shall be disposed of in any manner consistent with the quality of the honey and the laws of the state. Provided however, that in no instance shall the disposition of said honey be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said honey or for permission to process or relabel said honey to bring it into compliance with the provisions of this chapter.

History.

I.C., § 22-2812, as added by 2012, ch. 123,
§ 8, p. 342.

22-2813. Payment of expenses and costs. — All expenses and costs incurred in the administration of this chapter shall be paid out of the Idaho honey advertising fund. The commission shall keep an accurate record of all costs and expenditures and will report the same by publication on October 1st of each year. All expenses and costs incurred and contracted for by the commission in performing its duties under this chapter shall be paid out of such Idaho honey advertising fund in the following manner: vouchers shall be approved and submitted by the commission chairman to the director or his designated representative of the Idaho state department of agriculture for approval and subsequent issuance of a warrant by the state controller.

History.

I.C., § 22-2809, as added by 1951, ch. 62,
§ 2, p. 91; am. 1974, ch. 13, § 6, p. 138; am.

1994, ch. 180, § 20, p. 420; am. 2003, ch. 32,
§ 6, p. 115; am. and redesign. 2012, ch. 123,
§ 9, p. 342.

STATUTORY NOTES**Amendments.**

The 2012 amendment, by ch. 123, redesignated the section from § 22-2809 and substituted “this chapter” for “this act” in two places.

Compiler's Notes.

This section was formerly compiled as § 22-2809.

22-2814. Crediting of funds. — All moneys which have heretofore been credited to the general fund under the provisions of this chapter are hereby transferred to the Idaho honey advertising fund.

History.

I.C., § 22-2810, as added by 1951, ch. 62,

§ 3, p. 91; am. and redesign. 2012, ch. 123,
§ 10, p. 342.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 123, redesignated this section from § 22-2810 and substituted “this chapter” for “title 22, chapter 28, Idaho Code.”

Compiler’s Notes.

This section was formerly compiled as § 22-2810.

22-2815. Publication of registered beekeepers. — The commission shall make available to any pesticide applicator registered with the department, abatement or pest control district, or university of Idaho county agricultural extension office, a list of beekeepers registered with the commission. The list shall include the names and telephone numbers of the beekeepers, the counties in which they keep bees, and any other information the commission deems necessary to assist in the prevention of accidental poisoning of honeybees.

History.

I.C., § 22-2811, as added by 2006, ch. 87,

§ 3, p. 257; am. 2007, ch. 188, § 14, p. 548; am. and redesign. 2012, ch. 123, § 11, p. 342.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 123, redesignated this section from § 22-2811.

Compiler’s Notes.

This section was formerly compiled as § 22-2811.

CHAPTER 33

WHEAT — PROMOTION OF MARKETING

SECTION.

22-3301. Declaration of policy.

22-3302. Wheat commission created — Members.

22-3304. Qualification of members.

22-3305. Term of members.

22-3308. Meetings of commission.

22-3309. Duties and powers of commission.

22-3310. Commission accepting grants, donations and gifts.

SECTION.

22-3311. Bonds of agents and employees.

22-3312. Appointment of executive director — Duties — Salary.

22-3313. Establishment of executive director’s office. [Repealed.]

22-3315. Imposition of tax and provision for late fees.

22-3318. Penalties.

22-3301. Declaration of policy. — It is to the interest of all the people that the abundant natural resources of Idaho be protected, fully developed and uniformly distributed. Among the agricultural industries of the state of Idaho that contribute to the economic welfare of the state is the wheat industry. It is the purpose of this act to promote the public health and welfare of the citizens of our state by providing means for the protection, promotion, study, research, analysis and development of markets concerning the growing and marketing of Idaho wheat.

History.

1959, ch. 6, § 1, p. 13; am. 2012, ch. 77, § 1, p. 223.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 77, deleted the former third sentence which read: "Because of a surplus of wheat grown in this state, and because a surplus during recurrent years has become excessive and difficult to market in the available markets, it is necessary, in order to provide a profitable enterprise for the wheat growers of the state and to promote

employment of labor and to assist the wheat growers and those in the various industries dependent upon the wheat growers, that additional markets be found and developed."

Compiler's Notes.

The term "this act" refers to S.L. 1959, ch. 6, which is compiled as §§ 22-3301 to 22-3216 and 22-3318.

22-3302. Wheat commission created — Members. — There is hereby created and established in the department of self-governing agencies the "Idaho Wheat Commission" to be composed of five (5) members appointed by, and serving at the pleasure of, the governor, one (1) from each of the five (5) commission districts referred to in section 22-3304, Idaho Code, who shall be appointed by the governor from a list of names with at least three (3) names for each appointive office for each district submitted to the governor by the Idaho state wheat growers association, doing business as the Idaho grain producers association, and they shall hold office for a term of five (5) years. The dean of the college of agriculture, university of Idaho, or his duly authorized representative, shall be an ex officio member without vote of the commission.

History.

1959, ch. 6, § 2, p. 13; am. 1974, ch. 13, § 11, p. 138; am. 2012, ch. 77, § 2, p. 223.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 77, inserted "and serving at the pleasure of" near the beginning of the section and substituted "by the Idaho state wheat growers association,

doing business as the Idaho grain producers association" for "by the Idaho State Wheat Growers Association, Inc., a wheat growers association representing wheat growers throughout the state of Idaho."

22-3304. Qualification of members. — (1) Members of the commission shall be selected and appointed because of their ability and disposition to serve the state's interest and for knowledge of the state's natural resources. Members shall be citizens over twenty-five (25) years of age, residents of the state who have been actually engaged in growing wheat in this state for at least five (5) years, and who derive a substantial portion of their income from growing wheat in the state of Idaho.

(2) There shall be one (1) member from each of the five (5) districts described hereinafter:

District 1. The six (6) northern counties: Boundary, Bonner, Kootenai, Benewah, Latah and Shoshone.

District 2. Nez Perce, Lewis, Idaho, Adams, Washington, Payette, Gem, Boise, Valley and Clearwater Counties.

District 3. Canyon, Owyhee, Ada, Elmore, Camas, Gooding, Twin Falls, Blaine, Lincoln, Jerome, Minidoka and Cassia Counties.

District 4. Lemhi, Custer, Butte, Clark, Fremont, Jefferson, Madison, Teton, Bingham and Bonneville Counties.

District 5. Power, Bannock, Caribou, Oneida, Franklin and Bear Lake Counties.

History.

1959, ch. 6, § 4, p. 13; am. 2012, ch. 77, § 3, p. 223.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 77, divided the existing provisions in subsection (1) and added the subsection (2) designation.

22-3305. Term of members. — (1) Each year the governor shall appoint one (1) member to the commission for a term of five (5) years ending on June 30th; except that a member appointed to fill a vacancy occurring before the expiration of the term of a member separated from the commission for any cause, shall be appointed for the remainder of the term of the member whose position has been vacant.

(2) Each member shall hold office until his successor is appointed and qualified.

(3) The executive committee of the Idaho state wheat growers association, doing business as the Idaho grain producers association, may request the removal of a commissioner, with or without cause, by a majority vote. Upon receipt of the request, the governor may immediately withdraw the commissioner's appointment.

History.

1959, ch. 6, § 5, p. 13; am. 2012, ch. 77, § 4, p. 223.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 77, divided the provisions of the existing paragraph and added the subsection designations; deleted "except the first members who shall be appointed for terms of one (1) to five (5) years

each, as follows: District No. 1, three (3) years; District No. 2, four (4) years; District No. 3, two (2) years; District No. 4, one (1) year; District No. 5, five (5) years" following "June 30th" in subsection (1); and added subsection (3).

22-3308. Meetings of commission. — The commission shall meet at least once every three (3) months regularly and at such other times as called by the chairman or upon the written request of two (2) or more commission members. The chairman may call special meetings of the commission at any time or place.

History.

1959, ch. 6, § 8, p. 13; am. 2012, ch. 77, § 5, p. 223.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 77, added “or upon the written request of two (2) or more

commission members” at the end of the first sentence.

22-3309. Duties and powers of commission. — (1) Consistent with the general purposes of this chapter, the commission shall establish the policies to be followed in the accomplishments of such purposes.

(2) In the administration of this act, the commission shall have the following duties, authorities and powers:

- (a) To conduct a campaign of research, education and publicity.
- (b) To find new markets for wheat and wheat products.
- (c) To give, publicize and promulgate reliable information showing the value of wheat and wheat products for any purpose for which it is found useful and profitable.
- (d) To make public and encourage the widespread national and international use of the special kinds of wheat and wheat products produced from all varieties of wheat grown in Idaho.
- (e) To investigate and participate in studies of the problems peculiar to the producers of wheat in Idaho.
- (3) The commission shall have the duty, power and authority:
 - (a) To take such action as the commission deems necessary or advisable in order to stabilize and protect the wheat industry of the state and the health and welfare of the public.
 - (b) To sue and be sued.
 - (c) To enter into such contracts as may be necessary or advisable.
 - (d) To appoint and employ officers, agents and other personnel, including experts in agriculture and the publicizing of the products thereof, and to prescribe their duties and fix their compensation.
 - (e) To make use of such advertising means and methods as the commission deems advisable and to enter into contracts and agreements for research and advertising within and without the state.
 - (f) To cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state or by national law, engaged in work or activities similar to the work and activities of the commission, and to enter into contracts and agreements with such organizations or agencies for carrying on a joint campaign of research, education and publicity and reciprocal enforcement.
 - (g) To lease, purchase or own the real or personal property deemed necessary in the administration of this act.
 - (h) To prosecute in the name of the state of Idaho any suit or action for collection of the tax or assessment provided for in this act.
 - (i) To adopt, rescind, modify and amend all necessary and proper orders, resolutions and regulations for the procedure and exercise of its powers and the performance of its duties, including the calling of any referendum of the wheat growers in the state of Idaho as deemed necessary by the commission.
 - (j) To incur indebtedness and carry on all business activities.

(k) To keep books and records and accounts of all its doings, which books, records and accounts shall be open to inspection by the state controller at all times and to the public as set forth in chapter 3, title 9, Idaho Code.

History.

1959, ch. 6, § 9, p. 13.; am. 1994, ch. 180, § 25, p. 420; am. 2012, ch. 77, § 6, p. 223.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Amendments.

The 2012 amendment, by ch. 77, in subsection (2), deleted “in conjunction with the Idaho State Wheat Growers’ Association” following “the commission shall” in the introductory paragraph, added “including the calling of any referendum of the wheat growers in the state of Idaho as deemed necessary by the

commission” at the end of paragraph (i), and substituted “open to inspection by the state controller at all times and to the public as set forth in chapter 3, title 9, Idaho Code” for “open to inspection by the state controller and public at all times” in paragraph (k).

Compiler’s Notes.

The term “this act” refers to S.L. 1959, ch. 6, which is compiled as §§ 22-3301 to 22-3216 and 22-3318.

22-3310. Commission accepting grants, donations and gifts. —

The commission may solicit and accept grants, donations and gifts of funds from any source for expenditure for any purpose consistent with this chapter which may be specified as a condition of any grant, donation or gift. All funds received under the provisions of this chapter shall be paid into a bank account in the name of the Idaho wheat commission and such moneys are hereby continuously appropriated and made available for defraying the expenses of the commission in carrying out the provisions of this chapter.

History.

1959, ch. 6, § 10, p. 13; am. 1988, ch. 191, § 1, p. 346; am. 2012, ch. 77, § 7, p. 223.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 77, inserted “solicit and” in the first sentence.

22-3311. Bonds of agents and employees. — The commission may require that the executive director, or any agent or employee appointed by the commission be bonded to the state of Idaho in the time, form and manner as prescribed by chapter 8, title 59, Idaho Code. The cost of the bond is an administrative expense under this chapter.

History.

1959, ch. 6, § 11, p. 13; am. 1971, ch. 136, § 8, p. 522; am. 2000, ch. 99, § 2, p. 219; am. 2012, ch. 77, § 8, p. 223.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 77, added “The commission may require that” to the beginning sentence.

22-3312. Appointment of executive director — Duties — Salary. —

The commission shall appoint an executive director who shall devote full time to the administration of this chapter. The executive director shall be paid a reasonable salary fixed by the commission, commensurate with his duties, and all necessary expenses.

History.

1959, ch. 6, § 12, p. 13; am. 2000, ch. 99,
§ 3, p. 219; am. 2012, ch. 77, § 9, p. 223.

STATUTORY NOTES**Amendments.**

The 2012 amendment, by ch. 77, deleted the former second sentence, which read: "He shall proceed immediately to prepare the plans and

general program necessary and adequate to carry out the policies that are adopted by the commission".

22-3313. Establishment of executive director's office. [Repealed.]

Repealed by S.L. 2012, ch. 77, § 10, effective July 1, 2012.

History.

1959, ch. 6, § 13, p. 13; am. 2000, ch. 99,
§ 4, p. 219.

22-3315. Imposition of tax and provision for late fees. — (1) From and after the first day of July, 2012, there is hereby levied and imposed a tax not to exceed five cents (5¢) per bushel on all wheat grown in the state of Idaho or given to Idaho growers under a crop reduction program, and sold or contracted through commercial channels, and each and every crop grown or wheat given to growers under a crop reduction program thereafter. The tax shall be due on wheat given to growers under a crop reduction program and sold or contracted through commercial channels, regardless of any deduction of the tax on this same wheat prior to it being given to the grower. The tax shall be due on or before the time when such wheat is first sold or contracted in the commercial channels and shall be paid at such time or times as the commission may, by rule, prescribe, as hereinafter provided, but not later than the 15th day of the month next succeeding the three (3) month period in which such wheat is sold or contracted in commercial channels. The commission shall designate the quarters (three (3) month periods) for the purpose of collection of this tax.

(2) The tax shall be levied and assessed to the grower at the time of delivery for sale and shall be deducted by the first purchaser from the price paid to the grower at the time of sale or in case of a lienholder who may possess such wheat under his lien, the tax shall be deducted by the lienholder from the proceeds of the claim secured by such lien at the time the wheat is pledged or mortgaged. The tax shall be deducted as provided in this section whether the wheat is stored in this or any other state. The commission may, however, permit any federal corporation, such as the commodity credit corporation, to waive its responsibility for the collection of the tax, provided the amount of the tax is one dollar (\$1.00) or less.

(3) It shall be within the discretion of the commission to establish the

amount of the tax to be levied. The amount of the tax to be levied shall not exceed five cents (5¢) per bushel for any fiscal year. The decision whether to adjust the amount of the tax to be levied and the time for which the adjusted levy shall be in effect shall require the vote of a majority of the commission members.

(4) The tax constitutes a lien prior to all other liens and encumbrances upon such wheat except liens which are declared prior by operation of a statute of this state.

(5) Any person or firm who makes payment to the commission at a date later than that prescribed in this section may be subject to a late payment penalty as set forth by the commission by rule. Such penalty shall not exceed the rate of fifteen percent (15%) per annum on the amount due. In addition to the above penalty, the commission shall be entitled to recover all costs, fees, and reasonable attorney's fees incurred in the collection of the tax and penalty provided for in this section.

History.

1959, ch. 6, § 15, p. 13; am. 1970, ch. 36, § 1, p. 80; am. 1974, ch. 36, § 1, p. 1016; am. 1983, ch. 227, § 2, p. 628; am. 1990, ch. 199,

§ 1, p. 448; am. 1992, ch. 63, § 1, p. 195; am. 2001, ch. 105, § 1, p. 348; am. 2012, ch. 77, § 11, p. 223.

STATUTORY NOTES**Amendments.**

The 2012 amendment, by ch. 77, substituted "From and after the first day of July, 2012, there is hereby levied and imposed a tax not to exceed five cents (5¢) per bushel" for "From and after the first day of July, 1992,

there is hereby levied and imposed a tax not to exceed two cents (2¢) per bushel" in the first sentence in subsection (1) and substituted "five cents (5¢) per bushel" for "two cents (2¢) per bushel" in the second sentence in subsection (3).

22-3318. Penalties. — Any person who shall violate or aid in the violation of any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof be punished by a fine of not more than three hundred dollars (\$300) or imprisonment not to exceed ninety (90) days, or both. Fines collected for violation of this act shall be paid into any account of the commission established pursuant to section 22-3319, Idaho Code.

History.

1959, ch. 6, § 18, p. 13; am. 2012, ch. 77, § 12, p. 223.

STATUTORY NOTES**Amendments.**

The 2012 amendment, by ch. 77, substituted "any account of the commission established pursuant to section 22-3319, Idaho Code" for "the 'Idaho Wheat Commission Fund'." at the end of the section and made stylistic changes.

Compiler's Notes.

The term "this act" refers to S.L. 1959, ch. 6, which is compiled as §§ 22-3301 to 22-3216 and 22-3318.

CHAPTER 34

PESTICIDES AND CHEMIGATION

SECTION.

22-3404. Pesticide and chemigation applica-

tors — Classification licensing requirements.

22-3402. Registration — Labels — Information required — Fees.**RESEARCH REFERENCES**

A.L.R. — Validity, construction, and operation of state and municipal act or regulation requiring notice of pesticide and herbicide use. 18 A.L.R.6th 793.

22-3404. Pesticide and chemigation applicators — Classification licensing requirements. — (1) The director may classify pesticide applicator licenses issued under this act. Such classifications may include, but are not limited to, professional and private applicators. Separate licensing requirements and testing procedures may be utilized for each classification.

(2) Professional Applicators. No person shall act as a professional applicator without first obtaining a professional applicator's license issued by the department.

(a) Application for a license shall be on a form prescribed by the department and shall be accompanied by a fee as prescribed by rule; and

(b) On the application for a license to perform chemigation, the applicant must certify that the equipment and system he plans to use for chemigation meet department standards and that the owner and persons operating the equipment have read the Idaho rules for chemigation and that the owner intends to operate and maintain the chemigation system according to the rules. On the application for licensure, the department may require other information as it deems necessary; and

(c) An applicant must be at least eighteen (18) years of age and must pass the department's examination in order to demonstrate his knowledge of how to apply, use and handle pesticides or chemicals in areas relevant to the operations he intends to undertake, or proper equipment and methods for injecting chemicals through irrigation systems; and

(d) Show proof of financial responsibility as prescribed by rule; and

(e) An examination fee will be charged as prescribed by rule and an additional examination fee of five dollars (\$5.00) shall be charged when an exam is requested at other than a regularly scheduled examination date; and

(f) If at any time a licensed professional applicator fails to maintain the financial responsibility required by paragraph (d) of this subsection, his license shall be automatically suspended until the department receives verification that he is in compliance with paragraph (d) of this subsection.

(3) Private Applicator. No person shall act as a private applicator without first obtaining a private applicator license issued by the department.

(a) Application for a license shall be on a form prescribed by the department; and

(b) On the application for a license to perform chemigation, the applicant

must certify that the equipment and system he plans to use for chemigation meet department standards and that the owner and persons operating the equipment have read the Idaho rules for chemigation and that the owner intends to operate and maintain the chemigation system according to the rules. On the application for licensure, the department may require other information as it deems necessary; and

(c) An applicant must be at least eighteen (18) years of age and must pass the department's examination in order to demonstrate his knowledge of how to apply, use and handle pesticides or chemicals in areas relevant to the operations he intends to undertake or proper equipment and methods for injecting chemicals through irrigation systems; and

(d) An applicant must pay a license fee as prescribed by rule.

(4) If the director finds an applicant qualified for a professional or private applicator's license, and if an applicant applying for a license to engage in the application of pesticides or chemicals has met all of the requirements of any applicable federal or state laws, regulations and rules, the director shall issue the license. The license or permit may restrict the applicant to the use of a certain type or types of equipment, pesticides or chemicals. If a license or permit is not issued as applied for, the department shall inform the applicant in writing of the reasons therefor.

(5) The director may by rule require professional applicators to maintain and furnish records forthwith pertaining to the application of pesticides and other relevant information as he may deem necessary.

(6) Licenses issued to dealers and professional and private applicators shall expire as designated by the director unless suspended or revoked as provided for in section 22-3409, Idaho Code.

(7) Exemptions:

(a) The following persons are exempt from subsections (2), (3) and (4) of this section unless the person is applying chemicals through an irrigation system:

1. Any person applying pesticides other than restricted-use pesticides for himself or on an exchange of service basis, and who does not publicly hold himself out as a professional applicator; and

2. Any person using hand-powered equipment to apply pesticides other than restricted-use pesticides to lawns, or to ornamental trees and shrubs and who employs two (2) or fewer persons in his business who apply pesticides and is not holding himself out as a professional applicator; and

3. Any industry, governmental, university of Idaho research personnel and extension research personnel who apply pesticides other than restricted-use pesticides to experimental plots or to demonstrate the use of pesticides; and

4. Any veterinarian who applies pesticides as an integral part of his business and does not publicly hold himself out as a professional applicator.

(b) Federal, state, and other governmental agencies are exempt from the licensing fees provision of subsections (2) and (3) of this section.

(c) Professional applicators who do not apply pesticides may receive an exemption from the proof of financial responsibility required in subsection

(2)(d) of this section, upon submitting a completed form prescribed by the department.

History.

I.C., § 22-3404, as added by 1976, ch. 190, § 2, p. 688; am. 1984, ch. 148, § 1, p. 347; am. 1987, ch. 104, § 1, p. 214; am. 1987, ch. 299, § 1, p. 635; am. 1993, ch. 54, § 2, p. 142; am.

1996, ch. 22, § 4, p. 41; am. 1997, ch. 15, § 1, p. 19; am. 1999, ch. 69, § 4, p. 180; am. 2000, ch. 159, § 1, p. 401; am. 2010, ch. 48, § 1, p. 87.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 48, substituted “and who employs two (2) or fewer persons in his business who apply pesticides”

for “owned by such person, or as an incidental part of his business of taking care of yards for remuneration” in paragraph (7)(a)2.

22-3420. Prohibited acts.

JUDICIAL DECISIONS

Negligence Per Se.

Herbicide manufacturer was not entitled to summary judgment on the landowners’ claims for negligence per se for a violation of subsection (2), where there was sufficient expert

testimony presented that the manufacturer sold the herbicide knowing that it would be used in a manner that was inconsistent with its own labeling. *Adams v. United States*, 622 F. Supp. 2d 996 (D. Idaho 2009).

CHAPTER 35

PEA AND LENTIL COMMISSION

SECTION.

22-3502. Pea and lentil commission created — Members.

SECTION.

22-3506. Selection of commission — Terms of members — Vacancies.

22-3502. Pea and lentil commission created — Members. — There is hereby created and established in the department of self-governing agencies the Idaho pea and lentil commission to be composed of six (6) members. Five (5) of the members shall be growers and one (1) of the members shall be a processor or dealer. The dean of the college of agriculture, university of Idaho, or his duly authorized representative, shall be an ex officio member without vote of the commission.

History.

1965, ch. 106, § 2, p. 192; am. 1974, ch. 13, § 12, p. 138; am. 2011, ch. 54, § 1, p. 118.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 54, substituted “six (6) members” for “seven (7) members” in the first sentence and substituted

“one (1) of the members shall be a processor or dealer” for “two (2) of the members shall be processors or dealers” in the second sentence.

22-3506. Selection of commission — Terms of members — Vacancies. — (1) The governor shall appoint six (6) persons to the commission

based upon submitted nominee petitions. One (1) member shall be a dealer or processor and five (5) members shall be growers.

(a) Growers, dealers and processors shall nominate from among themselves, by petition, not more than two (2) names for each position to be filled on the commission.

(b) In the case of grower members, petitions shall be signed by not less than fifteen (15) qualified growers. The nominations made shall be, as near as practicable, representative of lentils, dry peas and chickpeas.

(c) Petitions for dealer or processor members shall be signed by not less than three (3) qualified processors or dealers.

(2) The first members of the commission shall draw lots to determine their respective terms of office. Two (2) of the original members shall serve for one (1) year; two (2) of the original members shall serve for two (2) years; and three (3) of the original members shall serve for three (3) years, provided however, that the terms of office of both dealer members of the commission shall not expire in the same year. The term of office of members of the commission thereafter shall be three (3) years, commencing on July 1.

(3) Members of the commission may not serve more than two (2) consecutive terms, nor may they hold or file for any elective political office while a member of the commission.

(4) In the event there are vacancies in the commission, it shall be the duty of the western pea and lentil growers' association, as the designated representative of Idaho growers of dry peas, lentils and chickpeas or, in the case of the dealer positions, the U.S. pea and lentil trade association as the designated representative of the dealers and processors of Idaho, to submit to the governor not more than two (2) qualified names for each vacancy supported by the proper nominating petitions. The governor shall make the appointment or appointments to fill each vacancy. The appointment shall be for the remainder of the term for that position.

History.

1965, ch. 106, § 6, p. 192; am. 2009, ch. 129, § 1, p. 408; am. 2011, ch. 54, § 2, p. 118.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 54, in the introductory paragraph of subsection (1), substituted “six (6) persons” for “seven (7) per-

sons” in the first sentence and “One (1) member shall be a dealer or processor” for “Two (2) members shall be dealers or processors” at the beginning of the last sentence.

CHAPTER 40

BARLEY — PROMOTION OF MARKETING

SECTION.

22-4002. Barley commission created — Members.

SECTION.

22-4005. Term of members.
22-4015. Imposition of tax.

22-4002. Barley commission created — Members. — There is hereby created and established in the department of self-governing agencies

the Idaho barley commission to be composed of three (3) grower members appointed by, and serving at the pleasure of, the governor, one (1) from each of the three (3) commission districts referred to in section 22-4004, Idaho Code, who shall be appointed by the governor from a list of names with at least three (3) names for each appointive office for each district submitted to the governor by the Idaho grain producers association, inc., a grain growers' association representing barley growers throughout the state of Idaho, and each shall hold office for the term specified in section 22-4005, Idaho Code. The commissioners appointed by the governor may select a barley industry representative to serve a three (3) year term on the commission. The dean of the college of agriculture, university of Idaho, or his duly authorized representative, shall be an ex officio member of the commission without vote.

History.

I.C., § 22-4002, as added by 1988, ch. 194,
§ 1, p. 351; am. 2012, ch. 263, § 1, p. 731.

STATUTORY NOTES**Amendments.**

The 2012 amendment, by ch. 263, inserted "and serving at the pleasure of" near the beginning of the first sentence.

22-4005. Term of members. — (1) Except as provided in subsection (3) of this section, the term of office of a member of the barley commission shall be three (3) years. Any member of the commission who has served for two (2) full consecutive terms shall not be eligible for reappointment until the expiration of a three (3) year period.

(2) Appointments to fill vacancies shall be for the balance of the unexpired term.

(3)(a) Beginning July 1, 1988, a member from district 1 will be appointed for a full four (4) year term ending in 1992. Subsequent terms will be for three (3) years.

(b) Beginning July 1, 1988, a member from district 2 will be appointed for a full three (3) year term ending in 1991. Subsequent terms will be for three (3) years.

(c) Beginning July 1, 1988, a member from district 3 will be appointed for a full two (2) year term ending in 1990. Subsequent terms will be for three (3) years.

(4) The executive committee of the Idaho state wheat growers association, doing business as the Idaho grain producers association, may request the removal of a commissioner, with or without cause, by a majority vote. Upon receipt of the request, the governor may immediately withdraw the commissioner's appointment.

History.

I.C., § 22-4005, as added by 1988, ch. 194,
§ 1, p. 351; am. 2012, ch. 263, § 2, p. 731.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 263, added subsection (4).

22-4015. Imposition of tax. — (1) There is hereby levied and imposed a tax of up to four cents (4¢) per hundredweight on all barley grown in the state of Idaho or given to Idaho growers under a crop reduction program, and sold or contracted in this state, and each and every crop grown or barley given to growers under a crop reduction program thereafter. The tax shall be due on barley given to growers under a crop reduction program and on barley sold or contracted through commercial channels in this state, regardless of any deduction of the tax on this same barley prior to it being given to the grower. The tax shall be due on or before the time when such barley is first sold or contracted in the commercial channels and shall be paid at such time or times as the commission may, by rule prescribe, as hereinafter provided, but not later than the 15th day of the month next succeeding the three (3) month period in which such barley is sold or contracted in commercial channels. The commission shall designate the quarters (three (3) month periods) for the purpose of collection of this tax.

(2) The tax shall be levied and assessed to the seller at the time of delivery for sale and shall be deducted by the first purchaser from the price paid to the seller at the time of sale or in case of a lienholder who may possess such barley under his lien, the tax shall be deducted by the lienholder from the proceeds of the claim secured by such lien at the time the barley is pledged or mortgaged. The tax shall be deducted as provided in this section whether the barley is stored in this or any other state. The commission may, however, permit any federal corporation, such as the commodity credit corporation, to waive its responsibility for the collection of the tax, provided the amount of the tax is one dollar (\$1.00) or less.

(3) The tax constitutes a lien prior to all other liens and encumbrances upon such barley except liens which are declared by operation of a statute of this state.

(4) Any person may request from the commission in writing, within thirty (30) days after payment thereof, a refund of all or any portion of an assessment levied hereunder on barley and paid by him. The commission shall make the refund not later than thirty (30) days after the end of the fiscal year in which the request is made. Refunds shall cease to be available beginning on the first July 1 following completion of a referendum for the continuation or discontinuation of refunds as described in section 22-4019, Idaho Code.

(5) A sale shall be exempt from the tax if a substantially similar tax is imposed by and paid to another state or foreign country and used for similar purposes with respect to the same barley. The commission shall by rule identify what other taxes are substantially similar and used for similar purposes, and shall establish procedures for sellers to prove the payment of the other taxes.

History.
I.C., § 22-4015, as added by 1988, ch. 194,

§ 1, p. 351; am. 1997, ch. 157, § 4, p. 453; am. 2012, ch. 263, § 3, p. 731.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 263, in the first sentence in subsection (1), deleted “from

and after the first day of July, 1997” from the beginning and substituted “up to four cents (4¢) for “two cents (2¢)”.

CHAPTER 42

ALFALFA AND CLOVER SEED INDUSTRIES

SECTION.	SECTION.
22-4204. Creation of commission — Members — Qualifications — Compensation.	22-4205. Nominations for grower members of commission — Qualifications.
	22-4206. Vacancies — Terms.

22-4204. Creation of commission — Members — Qualifications — Compensation. — There is hereby created and established in the department of self-governing agencies an alfalfa and clover seed commission to be thus known and designated. The commission shall be composed of six (6) alfalfa seed or clover seed growers and one (1) alfalfa seed or clover seed dealer.

The six (6) grower members shall be citizens and residents of the state of Idaho, each of whom is and has been actively engaged in the growing and producing of alfalfa seed or clover seed within the state of Idaho, and a substantial portion of whose income has been derived from growing alfalfa seed or clover seed.

The one (1) dealer member shall be a person who, individually or as executive officer of a corporation, firm, partnership, association or cooperative organization, is and has been actively engaged as a dealer in alfalfa seed or clover seed within the state of Idaho, is a citizen and resident of this state, and a substantial portion of his income shall have been derived from handling, packing, shipping, buying and selling alfalfa seed or clover seed, or acting as sales or purchasing agent, broker or factor of alfalfa seed or clover seed.

The qualifications of members of the commission as herein set forth must continue during their term of office. Each member of the commission shall be compensated as provided by section 59-509(n), Idaho Code.

History.
1974, ch. 184, § 4, p. 1481; am. 1980, ch. 247, § 20, p. 582; am. 1998, ch. 121, § 1, p.

451; am. 2000, ch. 201, § 5, p. 497; am. 2011, ch. 181, § 1, p. 513.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 181, in the first paragraph, inserted “and established in the department of self-governing agencies”

and deleted “within the department of agriculture” following “an alfalfa and clover seed commission” and deleted “practical” following “six (6)” and “one (1).”

22-4205. Nominations for grower members of commission — Qualifications. — (1) For the purpose of nominating grower members of the commission, at a meeting of the Idaho alfalfa and clover seed growers association, the board of directors shall review the names of active growers in Idaho that meet the qualifications as provided in this section. By June 1 of each year, the names of two (2) grower members nominated by the association for each vacancy occurring on the commission shall be submitted to the governor for his consideration. Each member nominated for the commission shall be a resident citizen of the state of Idaho for a period of four (4) years prior to his election or selection, shall have active experience in growing alfalfa seed or clover seed and shall be now actually engaged in growing alfalfa seed or clover seed in Idaho and shall derive a substantial portion of his income from growing alfalfa seed or clover seed or be the directing or managing head of a corporation, firm, partnership, or other business unit which derives a substantial portion of its income from growing alfalfa seed or clover seed. To continue holding office, each member must remain qualified. The governor may remove any member who becomes disqualified during his term of office or who is unable to carry out his duties. The term of office of each member of the commission shall terminate on the last day of June of the year in which the term for which the member was elected ends, but each member of the commission shall serve until his respective successor is elected and has qualified. From such list of nominees, the governor shall designate and appoint one (1) as a member of the commission.

(2) A general meeting of the Idaho Eastern Oregon Seed Association shall nominate two (2) dealers, one (1) of whom shall be appointed as provided for in this act by June 30 of each year, and one (1) of whom shall be designated as alternate.

History.

1974, ch. 184, § 5, p. 1481; am. 1998, ch. 121, § 2, p. 451; am. 2000, ch. 201, § 6, p.

497; am. 2006, ch. 365, § 2, p. 1103; am. 2011, ch. 181, § 2, p. 513.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 181, rewrote

the section to the extent that a detailed comparison is impracticable.

22-4206. Vacancies — Terms. — Any office which becomes vacant before expiration of the member's term shall be filled by appointment in the manner provided for regular appointments.

The term of office of the members of the commission shall be three (3) years.

Members of the commission may not serve more than two (2) consecutive terms, provided, upon serving two (2) consecutive terms, and the lapse of one (1) full term, such member may again be nominated and appointed to the commission.

History.

1974, ch. 184, § 6, p. 1481; am. 2011, ch. 181, § 3, p. 513.

STATUTORY NOTES**Amendments.**

The 2011 amendment, by ch. 181, in the first paragraph, deleted “except that such office may remain vacant until the next annual meeting of the growers if the vacancy is for less than one (1) year” from the end; and rewrote the second paragraph, which formerly read: “Commencing on July 1, 1975, the grower members of the commission shall draw lots to determine their respective terms

of office. Two (2) of the members shall serve for one (1) year; two (2) of the members shall serve for two (2) years; and two (2) of the members shall serve for three (3) years. The dealer member shall be appointed for a term of three (3) years. The term of office of the members of the commission thereafter shall be three (3) years, commencing on July 1, 1975.”

CHAPTER 43

WEATHER MODIFICATION DISTRICTS

SECTION.

22-4301. Establishment — Petition — Election.

22-4301. Establishment — Petition — Election. — (1) The county commissioners of any county shall, upon petition signed by not less than fifty (50) resident real property holders of said county, or any portion thereof, which may exclude incorporated cities, undertake the following procedure to determine the advisability of resolving to establish and maintain a weather modification district within the county as may be designated in the petition.

(a) A petition to form a weather modification district shall be presented to the county clerk and recorder. The petition shall be signed by not less than fifty (50) of the resident real property holders within the proposed district. The petition shall designate the boundaries of the district.

(b) The petition shall be filed with the county clerk and recorder of the county in which the signers of the petition are located. Upon the filing of the petition the county clerk shall examine the petition and certify whether the required number of petitioners have signed the petition. If the number of petition signers is sufficient, the clerk shall transmit the petition to the board of county commissioners.

(c) Upon receipt of a duly certified petition the board of county commissioners shall give notice of an election to be held, subject to the provisions of section 34-106, Idaho Code, in such proposed district for the purpose of determining whether or not the proposed district shall be organized and to elect the first board of trustees for the district. Such notice shall include the date and hours of the election, the polling places, the maximum percent of market value for assessment purposes of taxable property within the district which the proposed district will be permitted to levy, the general purposes of the proposed district, a description of lands to be included in the proposed district, a statement that a map of the proposed district is available in the office of the board of county commissioners, and the names and terms of the members to be elected to the first board of

trustees. The notice shall be published once each week for three (3) consecutive weeks prior to such election, in a newspaper of general circulation within the county.

(d) The election shall be held and conducted consistent with the provisions of chapter 14, title 34, Idaho Code. The county clerk shall appoint judges of election, one (1) of whom shall act as clerk for the election. At such election the electors shall vote for or against the organization of the district and the members of the first board of trustees.

(e) The county clerk shall certify the returns of the election to the board of county commissioners. If a majority of the votes cast at said election are in favor of the organization, the board of county commissioners shall declare the district organized and give it a name by which, in all proceedings, it shall thereafter be known, and shall further designate the first board of trustees elected, and thereupon the district shall be a legal taxing district.

(f) On the third Tuesday of May, in the next odd-numbered calendar year after the organization of any district, and on the third Tuesday of May every odd-numbered year thereafter, an election shall be held.

At the election in any district hereafter organized, there shall be elected by the qualified electors of the district, two (2) members of the board to serve for a term of four (4) years; at the next odd-numbered year election, there shall be elected one (1) member of the board to serve for a term of four (4) years. Such election shall be held and conducted consistent with the provisions of chapter 14, title 34, Idaho Code.

In any election for trustees, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that only one (1) qualified candidate has been nominated for a trustee position, it shall not be necessary for the candidate to stand for election, and the board of trustees of the district shall declare such candidate elected as trustee, and the secretary of the district shall immediately make and deliver to such person a certificate of election.

History.

1975, ch. 145, § 1, p. 334; am. 1982, ch. 254, § 2, p. 646; am. 1995, ch. 118, § 11, p. 417;

am. 2009, ch. 341, § 6, p. 993; am. 2011, ch. 11, § 3, p. 24.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 11, added the last sentence of the undesignated paragraph following paragraph (1)(f); and deleted the former next-to-the-last paragraph, which read: "Not later than the sixth Friday before any such election, nominations may be filed with the secretary of the board and if a nominee does not withdraw his name before the first publication of the notice of election, his name shall be placed on the ballot. The county clerk shall conduct such election, shall appoint judges, shall give notice of election by publication, and shall arrange such other

details in connection therewith. The returns of the election shall be certified to and shall be canvassed and declared by the board. The candidate or candidates receiving the most votes shall be elected."

Compiler's Notes.

As enacted, this section contained a subsection (1), but not a subsection (2).

Effective Dates.

Section 27 of S.L. 2011, ch. 11 declared an emergency retroactively to January 1, 2011. Approved February 23, 2011.

CHAPTER 45

RIGHT TO FARM

SECTION.

22-4502. Definitions.

22-4503. Agricultural operation, agricultural facility or expansion thereof not a nuisance — Exception.

SECTION.

22-4504. Local ordinances.

22-4505. Nuisance actions.

22-4506. Severability.

22-4502. Definitions. — As used in this chapter:

(1) “Agricultural facility” includes, without limitation, any land, building, structure, ditch, drain, pond, impoundment, appurtenance, machinery or equipment that is used in an agricultural operation.

(2) “Agricultural operation” means an activity or condition that occurs in connection with the production of agricultural products for food, fiber, fuel and other lawful uses, and includes, without limitation:

(a) Construction, expansion, use, maintenance and repair of an agricultural facility;

(b) Preparing land for agricultural production;

(c) Applying pesticides, herbicides or other chemicals, compounds or substances labeled for insects, pests, crops, weeds, water or soil;

(d) Planting, irrigating, growing, fertilizing, harvesting or producing agricultural, horticultural, floricultural and viticultural crops, fruits and vegetable products, field grains, seeds, hay, sod and nursery stock, and other plants, plant products, plant byproducts, plant waste and plant compost;

(e) Breeding, hatching, raising, producing, feeding and keeping livestock, dairy animals, swine, fur-bearing animals, poultry, eggs, fish and other aquatic species, and other animals, animal products and animal byproducts, animal waste, animal compost, and bees, bee products and bee byproducts;

(f) Processing and packaging agricultural products, including the processing and packaging of agricultural products into food and other agricultural commodities;

(g) Manufacturing animal feed;

(h) Transporting agricultural products to or from an agricultural facility;

(i) Noise, odors, dust, fumes, light and other conditions associated with an agricultural operation or an agricultural facility;

(j) Selling agricultural products at a farmers or roadside market;

(k) Participating in a government sponsored agricultural program.

(3) “Nonagricultural activities,” for the purposes of this chapter, means residential, commercial or industrial property development and use not associated with the production of agricultural products.

(4) “Improper or negligent operation” means that the agricultural operation is not undertaken in conformity with federal, state and local laws and regulations or permits, and adversely affects the public health and safety.

History.

I.C., § 22-4502, as added by 1981, ch. 177, § 1, p. 311; am. 1997, ch. 341, § 1, p. 1025;

am. 1999, ch. 377, § 1, p. 1035; am. 2011, ch. 229, § 1, p. 623.

STATUTORY NOTES**Amendments.**

The 2011 amendment, by ch. 229, rewrote

the section to the extent that a detailed comparison is impracticable.

22-4503. Agricultural operation, agricultural facility or expansion thereof not a nuisance — Exception. — No agricultural operation, agricultural facility or expansion thereof shall be or become a nuisance, private or public, by any changed conditions in or about the surrounding nonagricultural activities after it has been in operation for more than one (1) year, when the operation, facility or expansion was not a nuisance at the time it began or was constructed. The provisions of this section shall not apply when a nuisance results from the improper or negligent operation of an agricultural operation, agricultural facility or expansion thereof.

History.

I.C., § 22-4503, as added by 1981, ch. 177,

§ 1, p. 311; am. 1999, ch. 377, § 2, p. 1035; am. 2011, ch. 229, § 2, p. 623.

STATUTORY NOTES**Amendments.**

The 2011 amendment, by ch. 229, rewrote

the section to the extent that a detailed comparison is impracticable.

22-4504. Local ordinances. — No city, county, taxing district or other political subdivision of this state shall adopt any ordinance or resolution that declares any agricultural operation, agricultural facility or expansion thereof that is operated in accordance with generally recognized agricultural practices to be a nuisance, nor shall any zoning ordinance that requires abatement as a nuisance or forces the closure of any such agricultural operation or agricultural facility be adopted. Any such ordinance or resolution shall be void and shall have no force or effect. Zoning and nuisance ordinances shall not apply to agricultural operations and agricultural facilities that were established outside the corporate limits of a municipality and then were incorporated into the municipality by annexation. The county planning and zoning authority may adopt a nuisance waiver procedure to be recorded with the county recorder or appropriate county recording authority pursuant to residential divisions of property.

History.

I.C., § 22-4504, as added by 1994, ch. 107,

§ 2, p. 238; am. 1997, ch. 341, § 2, p. 1025; am. 2011, ch. 229, § 3, p. 623.

STATUTORY NOTES**Amendments.**

The 2011 amendment, by ch. 229, in the first sentence, inserted “agricultural facility or expansion thereof that is,” “requires abate-

ment as a nuisance or” and “or agricultural facility”; added the second sentence; and, in the third sentence, inserted “and agricultural facilities.”

22-4505. Nuisance actions. — (1) An agricultural operation, agricultural facility or expansion thereof shall not be found to be a nuisance under the circumstances described in section 22-4503, Idaho Code.

(2) An agricultural operation, agricultural facility or expansion thereof that is operated in accordance with generally recognized agricultural practices or in compliance with a state or federally issued permit shall not be found to be a public or private nuisance. The provisions of this subsection shall not apply when a nuisance results from the improper or negligent operation of an agricultural operation, agricultural facility or expansion thereof.

History.

I.C., § 22-4505, as added by 2011, ch. 229,
§ 4, p. 623.

22-4506. Severability. — If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

History.

I.C., § 22-4506, as added by 2011, ch. 229,
§ 5, p. 623.

CHAPTER 49

BEEF CATTLE ENVIRONMENTAL CONTROL ACT

SECTION.

22-4902. Declaration of policy and statement
of legislative intent.

22-4909A. Effect of federal environmental

protection agency enforce-
ment action.

22-4902. Declaration of policy and statement of legislative intent. — (1) The legislature recognizes the importance of protecting state natural resources including, surface water and ground water. It is the intent of the legislature to protect the quality of these natural resources while maintaining an ecologically sound, economically viable, and socially responsible beef cattle industry in the state. The beef cattle industry produces manure and process wastewater which, when properly used, supplies valuable nutrients and organic matter to soils and is protective of the environment, but may, when improperly stored and managed, create adverse impacts on natural resources, including waters of the state. This chapter is intended to ensure that manure and process wastewater associated with beef cattle operations are handled in a manner which protects the natural resources of the state.

(2) Further, the legislature recognizes that the beef cattle industry is potentially subject to various state and federal laws designed to protect state natural resources and that the Idaho department of agriculture is in the best position to administer and implement these various laws. It is

therefore the intent of the legislature that the administration of this law by the department of agriculture fully meets the goals and requirements of the federal clean water act and state laws designed to further protect state waters and that administration of this chapter by the department of agriculture shall not be more stringent than or broader in scope than the requirements of the clean water act and applicable state and federal laws. The department shall have authority to administer all laws to protect the quality of water within the confines of a beef cattle animal feeding operation that is not under permit issued by the federal environmental protection agency. In carrying out this chapter the department shall prioritize its resources on operations which have the greatest potential to significantly impact the environment and ensure that any requirements imposed under this chapter upon operators of beef cattle animal feeding operations are cost-effective and economically, environmentally and technologically feasible.

(3) Successful implementation of this chapter is dependent upon the department receiving adequate funding from the legislature and is dependent upon the department executing a memorandum of agreement with the United States environmental protection agency, the department of environmental quality and the Idaho cattle association which sets forth a working arrangement between the agencies to ensure compliance with this chapter and applicable state and federal laws, including the federal clean water act. Moreover, the legislature recognizes that it is important for the state to obtain a delegated national pollutant discharge elimination system (NPDES) permit program from the EPA under the clean water act.

History.	2004, ch. 187, § 1, p. 578; am. 2010, ch. 343,
I.C., § 22-4902, as added by 2000, ch. 63,	§ 1, p. 900.
§ 1, p. 138; am. 2001, ch. 103, § 7, p. 253; am.	

STATUTORY NOTES

Amendments.	Federal References.
The 2010 amendment, by ch. 343, added “that is not under permit issued by the federal environmental protection agency” in the third sentence in subsection (2).	The federal clean water act, referenced in subsection (2) and in subsection (3), is codified as 33 U.S.C.S. § 1251 et seq.

JUDICIAL DECISIONS

Cited in: Idaho Dairymen’s Ass’n v. Gooding County, 148 Idaho 653, 227 P.3d 907 (2010).

22-4903. Authority and duties of director concerning beef cattle animal feeding operations.

JUDICIAL DECISIONS

Local Regulation.	constitutionality of Gooding County, Idaho, Ordinance No. 90, which regulated water quality at confined animal feeding operations
Where a dairymen’s association and a cattle association filed a complaint challenging the	

(CAFOs), the supreme court held that Ordinance 90 did not violate Idaho Const., art. XII, § 2. While § 42-101 provided that control over the appropriation of water was vested in the state, regulation of water quality by local government was not preempted

under subsections (1) and (3) of § 67-6529D; because of Idaho's diverse geographical setting, water regulation at CAFOs does not call for a uniform regulatory scheme. *Idaho Dairy-men's Ass'n v. Gooding County*, 148 Idaho 653, 227 P.3d 907 (2010).

22-4906. Nutrient management plan.

JUDICIAL DECISIONS

Cited in: *Idaho Dairymen's Ass'n v. Gooding County*, 148 Idaho 653, 227 P.3d 907 (2010).

22-4909A. Effect of federal environmental protection agency enforcement action. — The Idaho department of agriculture shall have authority to administer all laws to protect the quality of water within the confines of a beef cattle animal feeding operation that is not under permit issued by the federal environmental protection agency. In addition, the nutrient management plan, and all information generated by the beef cattle feeding operation as a result of such plan, shall be deemed to be trade secrets, production records or other proprietary information, shall be kept confidential and shall be exempt from disclosure pursuant to section 9-340D, Idaho Code. In any case in which the United States environmental protection agency initiates an enforcement action regarding an alleged noncompliance at a beef cattle animal feeding operation, any pending administrative or civil enforcement action initiated by the director regarding the same alleged noncompliance shall be deemed void. If a compliance order addressing the alleged noncompliance has already been issued by the director, that order shall remain in full force and effect.

History.

I.C., § 22-4909A, as added by 2009, ch. 46,
§ 1, p. 127; am. 2010, ch. 343, § 2, p. 900.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 343, added the first two sentences.

CHAPTER 51

SEED INDEMNITY FUND LAW

SECTION.

22-5102. Definitions.

22-5103. Licenses.

22-5104. Bonds — Irrevocable letters of credit — Certificates of deposit — Single bond.

22-5118. Payment and violation.

SECTION.

22-5121. Assessments.

22-5125. Proof of claims — Procedure — Hearing.

22-5126. Failure to file — Loss of claim on fund.

22-5102. Definitions. — As used in this chapter:

(1) “Contract” means an agreement which may include, but is not limited to, those contracts commonly referred to as production, credit sale, bailment, deferred payment, deferred or price later contracts.

(2) “Delivery voucher” means a form, other than a receipt or scale weight ticket, authorized by rules of the department evidencing delivery of a producer’s seed crop to a seed buyer.

(3) “Department” means the Idaho state department of agriculture.

(4) “Deposit for service” means the transfer of a seed crop to a seed buyer or a person not licensed under this chapter for the purpose of cleaning, mixing, conditioning or other services related to the seed crop, provided such services are not offered in conjunction with a stored for withdrawal agreement.

(5) “Director” means the director of the Idaho state department of agriculture.

(6) “Failure” means the date that one (1) or more of the following events occurred, as determined by the director:

(a) An inability to financially satisfy producers;

(b) A declaration of insolvency;

(c) A revocation of license and the leaving of an outstanding indebtedness to a producer;

(d) A failure to redeliver any seed crop stored for withdrawal or to pay producers for seed crop pursuant to the terms of an agreement; or

(e) A denial of the application for a license renewal.

(7) “Person” means any individual, firm, association, corporation, partnership or limited liability company.

(8) “Producer” means the owner, tenant or operator of land in this state who has an interest in the proceeds from the sale of seed crops grown on that same land. Producer does not include growers of seed crop who deposit their seed crop in a seed facility in which they have a financial or management interest, except members of a cooperative marketing association qualified under chapter 26, title 22, Idaho Code.

(9) “Production summary” means records that include, but are not limited to, the kind and type of seed crop, producer name and address, location and number of acres, clean seed per acre, value per pound and, when applicable, the contract number and lot identity.

(10) “Receipt” means a warehouse receipt.

(11) “Scale weight ticket” means a load slip, other than a receipt, given to a producer by a seed buyer for transfer of the seed crop to the seed buyer. Each scale weight ticket shall be sequentially numbered, shall be recorded in triplicate and shall set forth the following:

(a) Name and address of seed buyer;

(b) Date of weighing;

(c) Producer of seed crop weighed;

(d) Kind or variety of seed crop weighed;

(e) Gross delivery weight;

(f) Tare;

(g) Net delivery weight; and

(h) Full signature of weigher or name of supervisor of scale.

(12) "Seed buyer" means any person having a commercial operation, its agents and employees, together with its elevators, mills, buildings, or other structures who owes or has any financial obligation to the producer for seed crop grown by that producer and transferred to the seed buyer.

(13) "Seed crops" means any seed crop regulated by chapter 4, title 22, Idaho Code.

(14) "Seed facility" means:

(a) That portion of the commercial operation of a seed buyer where seed crop transferred to it from an unpaid producer is stored; or

(b) Where seed crop is stored for withdrawal.

(15) "Stored for withdrawal" means the deposit of seed crop with a seed facility by the producer for the subsequent withdrawal by that producer of the same seed crop or similar seed crop, as agreed to by the parties.

(16) "Transfer" means, unless otherwise defined by the parties in writing, the event when a producer or his agent delivers seed crop to the seed buyer who then gives the producer or his agent a scale weight ticket, receipt, or other written evidence of transfer.

(17) "Uninsurable peril" means an event or situation for which insurance coverage cannot be purchased, or for which premiums are economically prohibitive including, but not limited to, catastrophic destruction and damage that occurs gradually. Catastrophic destruction includes, but is not limited to, earthquakes, acts of terrorism and floods. Destruction that occurs gradually includes, but is not limited to, insect and rodent infestation, and mold.

(18) "Written evidence of transfer" means:

(a) A delivery voucher;

(b) A receipt; or

(c) A scale weight ticket.

History.

I.C., § 22-5102, as added by 2002, ch. 256,
§ 1, p. 736; am. 2010, ch. 100, § 1, p. 192.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 100, added subsections (4) and (17) and redesignated the

other subsections accordingly; and in paragraph (11)(d), inserted "or variety."

22-5103. Licenses. — (1) Prior to beginning operation, a person intending to operate as a seed buyer shall first procure a license from the department. Each license issued pursuant to this chapter shall be issued for a period of one (1) year and the license or legible copy thereof shall be prominently displayed in each place of business.

(2) A seed facility endorsement showing the location of each seed facility in Idaho shall be attached to the seed buyer's license.

(3) The department is authorized to issue or renew a seed buyer license in accordance with this chapter, and the rules promulgated by the department provided each applicant meets the following conditions:

- (a) Pay an application fee of up to five hundred dollars (\$500) pursuant to criteria established by rule, with the exception of those persons holding a license issued pursuant to chapter 4, title 22, Idaho Code;
 - (b) Submit a completed application form provided by the department, with required exhibits. The application shall include:
 - (i) The name of the applicant;
 - (ii) The names of the officers and directors if the applicant is a corporation or association;
 - (iii) The names of the partners if the applicant is a partnership or a limited liability company;
 - (iv) The location of the principal place of business;
 - (v) Information relating to any judgment against the applicants; and
 - (vi) Any other reasonable information the department finds necessary to carry out the provisions and purposes of this chapter.
 - (c) Provide a sufficient and valid bond as required by this chapter;
 - (d) Provide a current, sufficient policy of insurance covering losses as required by this chapter;
 - (e) Provide the location of its seed facilities in Idaho;
 - (f) Provide a written schedule of conditioning, bagging and testing charges;
 - (g) Have on file a test report pursuant to sections 71-113 and 71-117, Idaho Code, from the Idaho state department of agriculture bureau of weights and measures showing approved status for any scales used for weighing received seed crops and any scales used for weighing clean weight of seed crops; and
 - (h) Provide with the initial license application an audited or reviewed financial statement prepared by an independent certified public accountant or licensed public accountant showing that the applicant has and does maintain a balance sheet with current assets not less than current liabilities, a statement of profit or loss, a statement of net worth and a statement of cash flows, all of which have been prepared according to generally accepted accounting principles not more than twelve (12) months prior to the date of the initial license application and additional financial information as determined by the director.
- (4) All fees collected, pursuant to this chapter, for license application and renewal shall be deposited in the seed indemnity fund.
- (5) All materials required for renewal of a license shall be received by the department prior to the expiration date of the current license. A license which has expired may be reinstated by the department upon receipt of all necessary licensing materials required by the provisions of this chapter and a reinstatement fee in an amount up to one thousand dollars (\$1,000) pursuant to criteria established by rule, providing that this material is filed within thirty (30) days from the date of expiration of the current license.
- (6) A delivery of seed crop between producers, none of whom are seed buyers, shall be exempt from the provisions of this chapter.

History.

I.C., § 22-5103, as added by 2002, ch. 256,
§ 1, p. 736; am. 2010, ch. 100, § 2, p. 192.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 100, added paragraph (3)(h).

22-5104. Bonds — Irrevocable letters of credit — Certificates of deposit — Single bond. — Every person applying for a license shall execute and file with the department a good and sufficient bond issued by an insurer authorized to transact such insurance in this state. The bond shall be in favor of the seed indemnity fund to secure the faithful performance of the applicant's obligations under this chapter, and of such additional unpaid obligations assumed under agreements with producers of seed crops transferred to or deposited with the applicant. Said bond shall be in such form and amount, shall have such surety or sureties, and shall contain such terms and conditions as the department may prescribe to carry out the purposes of this chapter. Whenever the department determines that a previously approved bond is insufficient, it may require an additional bond or bonds conforming with the requirements of this chapter. Unless the additional bond is given within the time fixed by a written demand therefor, the license may be suspended or revoked.

At the discretion of the director, any person required to submit a bond to the department may give to the department an irrevocable letter of credit or certificate of deposit payable to the seed indemnity fund in lieu of the bond required herein. A certificate of deposit shall be submitted with an audited or reviewed financial statement prepared in accordance with the rules of the department by an independent Idaho certified public accountant or Idaho licensed public accountant. The principal amount of the letter of credit or certificate of deposit shall be the same as that required for a surety bond pursuant to this chapter. The letter of credit or certificate of deposit shall remain on file with the department until it is released, canceled or discharged by the director or until the director is notified ninety (90) days in advance, by registered or certified mail, return receipt requested, that the letter of credit or certificate of deposit is renewed, canceled or amended. Failure to notify the director may result in the suspension or revocation of the seed buyer license. The provisions of this chapter that apply to a bond apply to each letter of credit or certificate of deposit given in lieu of such bond. Under the provisions of this chapter, an irrevocable letter of credit or certificate of deposit shall not be accepted unless it is issued by a national bank or federal thrift institution in Idaho or by a state-chartered bank or thrift institution authorized to conduct business in Idaho and insured by the federal deposit insurance corporation.

If a seed buyer is also licensed pursuant to either chapter 2 or 5, title 69, Idaho Code, that seed buyer may obtain a single bond, certificate of deposit or irrevocable letter of credit as surety for both chapter 51, title 22, Idaho Code, and chapter 2 or 5, title 69, Idaho Code. The bond, certificate of deposit or irrevocable letter of credit shall be made out in favor of the commodity indemnity fund and the seed indemnity fund. In the event a seed buyer fails as defined in section 22-5102(6), Idaho Code, and a single bond, certificate of

deposit or irrevocable letter of credit is written in favor of the commodity indemnity fund and seed indemnity fund, the proceeds of the bond, certificate of deposit or irrevocable letter of credit will be allocated based on the dollar amount of the verified claims approved pursuant to chapter 51, title 22, Idaho Code, and chapter 2, title 69, Idaho Code.

History.

I.C., § 22-5104, as added by 2002, ch. 256, § 1, p. 736; am. 2003, ch. 151, § 1, p. 434; am. 2010, ch. 100, § 3, p. 192.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 100, updated the section reference in the last sentence of

the last paragraph in light of the 2010 amendment of § 22-5102.

22-5118. Payment and violation. — (1) A seed buyer shall pay the producer the purchase price for seed crops in legal tender within ninety (90) days of sale unless otherwise agreed to in writing.

(2) Any seed buyer that violates the provisions of section 18-3106, Idaho Code, in making payment to the producer for any seed crop without sufficient funds in, or credit with, such bank or other depository, also violates the provisions of this chapter. The word “credit” as used herein shall mean an arrangement or understanding with the bank or depository for such payment.

History.

I.C., § 22-5118, as added by 2002, ch. 256, § 1, p. 736; am. 2011, ch. 173, § 1, p. 494.

STATUTORY NOTES**Amendments.**

The 2011 amendment, by ch. 173, rewrote the section heading, which read: “Payment

with insufficient funds a violation”; and added subsection (1); and added the subsection (2) designation to the existing provisions.

22-5121. Assessments. — Every producer shall pay an assessment for deposit in the seed indemnity fund according to the provisions of this chapter and rules promulgated by the department. A delivery of seed crop between producers, none of whom are seed buyers, is exempt from the collection and payment of assessments. Assessments shall be collected on the gross dollar amount, without any deduction, owed to, or paid, or to be paid, on behalf of the producer of the seed crop.

(1) The initial rate of the assessment shall be five-tenths of one percent (.5%). Changes in the rate will be established by criteria in the rules of the department. However, the producer’s annual assessment shall not exceed five-tenths of one percent (.5%).

(2) If seed crop is stored for withdrawal, the assessment shall not exceed one-half cent (1/2¢) per pound, based on clean weight or, if not available, estimated clean weight, per twelve (12) month period, payable at time of withdrawal.

(3) There are no indemnity fund assessments on seed crops deposited for service.

History.

I.C., § 22-5121, as added by 2002, ch. 256,
§ 1, p. 736; am. 2010, ch. 100, § 4, p. 192.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 100, added subsection (3).

22-5125. Proof of claims — Procedure — Hearing. — After the director has declared a failure, the department shall process the claims of producers having paid or owing assessments who: (a) produce written evidence of transfer together with the amounts of their unpaid claims, and (b) have “stored for withdrawal” and provide written evidence of deposit.

(1) The department shall give written notice to and provide a reasonable time of not less than thirty (30) days and not more than sixty (60) days for producers to file their written verified claims, including any written evidence, with the department.

(2) The department shall investigate each claim and shall notify in writing each claimant, the seed buyer and the advisory committee of the department's determination as to the validity and amount of each claim. A claimant or seed buyer may request a hearing on the department's determination within twenty (20) days of receipt of written notification of the determination pursuant to chapter 52, title 67, Idaho Code. Upon determining the amount and validity of the claim, the director shall pay to the claimant an amount equal to ninety percent (90%) of the approved claim from the seed indemnity fund. Prior to any payment from the fund to a claimant, the claimant shall be required to subrogate and assign to the department his right to any recovery from any other source. The claimant shall be entitled to seek recovery of the remaining ten percent (10%), which was not assigned to the department. The procedure to determine the value of any claim will be established by rules.

(3) In the event of a shortage or inability to meet financial obligations, the department shall determine each producer's pro rata share of available seed crops and any deficiency shall be the claims of the producers. Each type of seed crop shall be treated separately for the purpose of determining shortages.

(4) The director shall not approve or pay any claim based on losses resulting from transactions with persons unlicensed pursuant to this chapter. The director shall not approve or pay any claim made on the seed indemnity fund if the claim is for the payment of interest, attorney's fees, ancillary costs, or punitive damages. The director shall not approve or pay any claim based on losses resulting from uninsurable perils.

(5) If a producer's claim reveals that the assessment has not been paid or collected, and the claim is otherwise valid, the amount of the assessment shall be deducted from the claim payment.

History.
I.C., § 22-5125, as added by 2002, ch. 256,
§ 1, p. 736; am. 2010, ch. 100, § 5, p. 192.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 100, added the
last sentence in subsection (4).

22-5126. Failure to file — Loss of claim on fund. — No claim shall be paid from the fund to a producer who refuses or neglects to file a verified claim against a seed buyer:

(1) Within ninety (90) days from the date prescribed in the “notice of failure,” or within the time limits of section 22-5125(1), Idaho Code, whichever is later; or

(2) If the claim is filed more than two (2) years from the date of transfer. Claims for seed crops used for lawns, turf and land reclamation including, but not limited to, bluegrass, ryegrass, native grasses, sagebrush and other native and nonnative shrubs, may not exceed two (2) years from the date of transfer or the date of sale, whichever occurs later.

History.
I.C., § 22-5126, as added by 2002, ch. 256,
§ 1, p. 736; am. 2011, ch. 173, § 2, p. 494.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 173, added the
last sentence in subsection (2).

CHAPTER 52

CARBON SEQUESTRATION ADVISORY COMMITTEE

SECTION.	SECTION.
22-5201. Legislative intent.	sequestration advisory committee.
22-5202. Carbon sequestration advisory committee created — Membership — Compensation — Administrative assistance.	22-5204. Reports — Contents. [Repealed.]
22-5203. Powers and duties of the carbon	22-5205. Powers and duties of the chairman.
	22-5206. Carbon sequestration assessment fund created.

22-5201. Legislative intent. — Increasing levels of carbon dioxide and other greenhouse gases in the atmosphere have led to growing interest in national and international forums for implementing measures to slow and reverse the buildup of such atmospheric constituents. Such measures may potentially include the establishment of systems of trading in credits for adoption of practices, technologies or other measures which decrease net emissions of carbon dioxide. Improved agricultural and timber production methods, soil and forest conservation practices and other methods of stewardship of soil and other land resources have great potential to increase carbon sequestration on agricultural and private forest lands and help offset

carbon dioxide emissions from other sectors of the economy. It is in the interest of agricultural producers, nonindustrial private forest landowners and the public in general that the Idaho state soil and water conservation commission document and quantify carbon sequestration and greenhouse emissions reductions associated with agricultural and forestry practices, management systems and land uses occurring on cropland, forest land and rangeland in Idaho. It is the intent of the legislature that efforts to quantify and verify carbon sequestration on agricultural and forest lands will enhance the ability of the state's agricultural and nonindustrial private forest landowners to participate in any system of carbon sequestration marketing or trading.

History.

I.C., § 22-5101 [22-5201], as added by 2002, ch. 365, § 1, p. 1029; am. and redesi-

2003, ch. 16, § 3, p. 48; am. 2010, ch. 279, § 19, p. 719.

STATUTORY NOTES

Cross References.

State soil and water conservation commission, § 22-2718.

fourth sentence, substituted "Idaho state soil and water conservation commission" for "soil conservation commission".

Amendments.

The 2010 amendment, by ch. 279, in the

22-5202. Carbon sequestration advisory committee created — Membership — Compensation — Administrative assistance. —

(1) The carbon sequestration advisory committee is hereby created. The committee shall consist of the following nineteen (19) members, to be appointed by and serve at the pleasure of the governor:

- (a) The chairman of the Idaho state soil and water conservation commission or his designee;
- (b) The director of the department of agriculture or his designee;
- (c) The director of the department of environmental quality or his designee;
- (d) The director of the department of lands or his designee;
- (e) One (1) member representing the University of Idaho college of agriculture;
- (f) One (1) member representing an entity which generates electrical energy;
- (g) Two (2) members who are producers of field crops, at least one (1) of whom actively employs a minimum tillage management system in his farming operation;
- (h) Two (2) members who are producers of livestock, at least one (1) of whom is actively involved in implementing a rangeland improvement plan;
- (i) One (1) member with expertise in carbon sequestration marketing or trading;
- (j) One (1) member representing soil conservation districts, as defined in section 22-2717, Idaho Code;
- (k) One (1) member representing the biofuels industry;

- (l) One (1) member representing the transportation industry;
 - (m) One (1) member representing an environmental protection or conservation organization;
 - (n) One (1) member representing nonindustrial private forest landowners;
 - (o) One (1) member representing American Indian tribal interests;
 - (p) One (1) member whose expertise is geology; and
 - (q) One (1) member whose expertise is economics.
- (2) Members of the committee shall be compensated as provided in section 59-509(b), Idaho Code.
- (3) The Idaho state soil and water conservation commission shall assist the committee with administrative support as reasonably requested by the committee.

History.

I.C., § 22-5102 [22-5202], as added by 2002, ch. 365, § 1, p. 1029.; am. and redesign.

2003, ch. 16, § 4, p. 48; am. 2006, ch. 217, § 1, p. 652; am. 2010, ch. 279, § 20, p. 719.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 279, in paragraph (1)(a) and in subsection (3), substituted

“Idaho state soil and water conservation commission” for “soil conservation commission”.

22-5203. Powers and duties of the carbon sequestration advisory committee. — The carbon sequestration advisory committee may:

- (1) Advise and assist the chairman of the Idaho state soil and water conservation commission in preparing the reports required by this chapter and in conducting the assessment pursuant to section 22-5205, Idaho Code;
- (2) Recommend policies or programs to enhance the ability of Idaho agricultural and nonindustrial private forest landowners to participate in systems of carbon trading. Such recommendations shall include potential policies or programs designed to optimize economic benefits to agricultural producers and nonindustrial private forest landowners participating in carbon trading transactions. Such policies or programs may include, but are not limited to, identifying existing or the potential of creating nonprofit organizations or other public or private entities capable of serving as assemblers of carbon credits or as intermediaries on behalf of producers in carbon trading systems;
- (3) Encourage the production of educational and advisory materials regarding carbon sequestration on agricultural and forest lands and participation in systems of carbon or greenhouse emissions trading;
- (4) Identify and recommend areas of research needed to better understand and quantify the processes of carbon sequestration on agricultural and forest lands; and
- (5) Review the carbon sequestration programs and policies of other states.

History.

I.C., § 22-5103 [22-5203], as added by 2002, ch. 365, § 1, p. 1029; am. and redesisg.

2003, ch. 16, § 5, p. 48; am. 2010, ch. 279, § 21, p. 719.

STATUTORY NOTES**Cross References.**

State soil and water conservation commission, § 22-2718.

tuted "Idaho state soil and water conservation commission" for "soil conservation commission".

Amendments.

The 2010 amendment, by ch. 279, substi-

22-5204. Reports — Contents. [Repealed.]

Repealed by S.L. 2011, ch. 151, § 11, effective July 1, 2011.

History.

I.C., § 22-5104, as added by 2002, ch. 365,

§ 1, p. 1029; am. and redesisg. 2003, ch. 16, § 6, p. 48.

22-5205. Powers and duties of the chairman. — (1) In consultation with the carbon sequestration advisory committee, the chairman of the Idaho state soil and water conservation commission shall assess agricultural and private forest lands in Idaho for past carbon sequestration and future carbon sequestration potential. The assessment shall seek to quantify carbon sequestration associated with various agricultural and forestry practices, management systems and land uses occurring on agricultural and forest lands in this state. On or before March 1, 2003, the chairman shall publish a report of the findings. From time to time, the chairman may update the findings as advancements in understanding of the processes of carbon sequestration and new data become available.

(2) The assessment shall be conducted in a manner that shall provide a means for owners of agricultural and forest land to estimate past and future net carbon sequestration resulting from agricultural and forestry practices, conservation measures, management systems and land uses occurring on their property. The chairman of the Idaho state soil and water conservation commission may contract and cooperate with the natural resources conservation service of the United States department of agriculture to conduct assessment activities provided for in this section.

(3) The Idaho state soil and water conservation commission may apply for and accept grants, gifts or other sources of public and private funds to carry out the purposes of this chapter.

History.

I.C., § 22-5105 [22-5205], as added by 2002, ch. 365, § 1, p. 1029; am. and redesisg.

2003, ch. 16, § 7, p. 48; am. 2010, ch. 279, § 22, p. 719.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 279, throughout the section, substituted "Idaho state soil

and water conservation commission" for "soil conservation commission".

22-5206. Carbon sequestration assessment fund created. — There is hereby created and established in the state treasury a fund to be known as the “Carbon Sequestration Assessment Fund,” which shall consist of such funds, grants, donations or moneys from other sources. The fund shall be administered by the Idaho state soil and water conservation commission in order to carry out the purposes of this chapter. Moneys in the fund may be expended pursuant to appropriation. Any interest earned on the investment of idle moneys in the fund shall be returned to the fund.

History. 2003, ch. 16, § 8, p. 48; am. 2010, ch. 279, I.C., § 22-5106 [22-5206], as added by § 23, p. 719.
2002, ch. 365, § 1, p. 1029; am. and redesign.

STATUTORY NOTES

Amendments. commission” for “soil conservation commission.”
The 2010 amendment, by ch. 279, substituted “Idaho state soil and water conservation

TITLE 23

ALCOHOLIC BEVERAGES

CHAPTER.

1. INTERPRETATIVE AND GENERAL PROVISIONS OF IDAHO LIQUOR ACT, § 23-105.
2. STATE LIQUOR DIVISION, §§ 23-201, 23-203 — 23-205, 23-207, 23-211, 23-214.
3. LOCAL LIQUOR STORES AND DISTRIBUTING STATIONS, §§ 23-301, 23-304 — 23-306, 23-309, 23-311.
4. LIQUOR FUND, §§ 23-404, 23-406, 23-407.
6. PENAL PROVISIONS, §§ 23-607, 23-609 — 23-611.

CHAPTER.

9. RETAIL SALE OF LIQUOR BY THE DRINK, §§ 23-903, 23-914, 23-940.
10. BEER, §§ 23-1003, 23-1007, 23-1008, 23-1018, 23-1025, 23-1031, 23-1033.
13. COUNTY OPTION KITCHEN AND TABLE WINE ACT, §§ 23-1302, 23-1307, 23-1314, 23-1319, 23-1324, 23-1326, 23-1327.

CHAPTER 1

INTERPRETATIVE AND GENERAL PROVISIONS OF IDAHO LIQUOR ACT

SECTION.

23-105. Alcoholic liquor defined.

23-105. Alcoholic liquor defined. — “Alcoholic liquor,” as the term is used in this act, includes:

(a) “Alcohol,” meaning the product of distillation of any fermented liquor, rectified once or more than once, whatever may be the origin thereof, or synthetic ethyl alcohol.

(b) “Spirits,” meaning any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including, among other things, brandy, rum, whiskey and gin.

(c) Any liquid or solid, patented or not, containing spirits, and susceptible of being consumed by a human being for beverage purposes and containing more than four percent (4%) of alcohol by volume.

History.

1939, ch. 222, § 106, p. 465; am. 2011, ch. 130, § 1, p. 363; am. 2012, ch. 113, § 1, p. 311.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 130, substituted “once or more than once” for “either once or oftener” in subsection (a); deleted former subsection (c), which was the definition for “Wine”; and redesignated former subsection (d) as present subsection (c).

The 2012 amendment, by ch. 113, in sub-

section (c), deleted “alcohol” preceding “spirits” and substituted “volume” for “weight.”

Compiler’s Notes.

The words “this act” refer to S.L. 1939, ch. 222, which is generally compiled as chapters 1 to 6, title 23, Idaho Code.

CHAPTER 2
STATE LIQUOR DIVISION

SECTION.

- 23-201. Director — Appointment and term.
- 23-203. Powers and duties.
- 23-204. Successor to property of former administrators. [Repealed.]
- 23-205. Secretary — Appointment, term and duties. [Repealed.]

SECTION.

- 23-207. Specific rules and regulations.
- 23-211. Personnel not to be interested in private liquor traffic.
- 23-214. Officers and employees not personally liable.

23-201. Director — Appointment and term. — There shall be a state liquor division (in this act referred to as the “division”), in the office of the governor. The division shall be a division of the office of the governor for the purposes of chapter 8, title 67, Idaho Code, and the administrator of the division shall be known as the director of the state liquor division. The director shall be appointed by the governor for a term of three (3) years, but may be removed by the governor at will.

History.

1939, ch. 222, § 201, p. 465; am. 1941, ch. 10, § 1, p. 20; am. 1974, ch. 22, § 8, p. 592;

am. 2009, ch. 23, § 3, p. 53; am. 2012, ch. 113, § 2, p. 311.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 113, substituted “chapter 8” for “chapter 24” in the second sentence and deleted the former third sentence which read, “The division shall be conducted by the director of the division.”

Compiler’s Notes.

The words “this act” refer to S.L. 1939, ch. 222, which is generally compiled as chapters 1 to 6, title 23, Idaho Code.

23-203. Powers and duties. — The division shall have the following general powers and duties:

- (a) Regulation of Liquor Traffic. To permit, license, inspect and regulate the manufacture, importation, transportation, storage, sale and delivery of alcoholic liquor for purposes permitted by this act.
- (b) Traffic in Liquor. To buy, import, transport, store, sell and deliver alcoholic liquor, wine containing more than sixteen percent (16%) alcohol by volume, table wine, as defined in section 23-1303, Idaho Code, that is manufactured in Idaho, and sparkling wine.
- (c) Operation of Liquor Stores. To establish, maintain and discontinue warehouses, state liquor stores and distribution stations, and in the operation thereof to buy, import, transport, store, sell and deliver such other nonalcohol merchandise as may be reasonably related to its sale of alcoholic liquor.
- (d) Acquisition of Real Estate. To acquire, buy and lease real estate and to improve and equip the same for the conduct of its business.
- (e) Acquisition of Personal Property. To acquire, buy and lease personal property necessary and convenient for the conduct of its business.
- (f) Making Reports. To report to the governor annually, and at such other

times as he may require, concerning the condition, management and financial transactions of the division.

(g) General Powers. To do all things necessary and incidental to its powers and duties under this act.

The division shall so exercise its powers as to curtail the intemperate use of alcoholic beverages. It shall not attempt to stimulate the normal demands of temperate consumers thereof, irrespective of the effect on the revenue derived by the state from the resale of intoxicating liquor.

History.

1939, ch. 222, § 203, p. 465; am. 2006, ch. 18, § 1, p. 68; am. 2009, ch. 23, § 5, p. 53; am. 2011, ch. 130, § 2, p. 363.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 130, added “wine containing more than sixteen percent (16%) alcohol by volume, table wine, as de-

fined in section 23-1303, Idaho Code, that is manufactured in Idaho, and sparkling wine” to the end of subsection (b).

23-204. Successor to property of former administrators. [Repealed.]

Repealed by S.L. 2012, ch. 113, § 3, effective July 1, 2012.

History.

1939, ch. 222, § 204, p. 465; am. 2009, ch. 23, § 6, p. 53.

23-205. Secretary — Appointment, term and duties. [Repealed.]

Repealed by S.L. 2012, ch. 113, § 4, effective July 1, 2012.

History.

1939, ch. 222, § 305, p. 465; am. 1941, ch. 10, § 2, p. 20; am. 2009, ch. 23, § 7, p. 53.

23-207. Specific rules and regulations. — Without attempting or intending to limit the general powers of the director of the division contained in section 23-206, Idaho Code, such powers shall extend to and include the following:

(a) Subject to the provisions of chapter 53, title 67, Idaho Code, to prescribe the qualifications of and to select personnel to conduct its business and perform its functions; to require that those holding positions of trust be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code; to fix the compensation of all appointees and employees, assign their duties, and to discharge them.

(b) To regulate the management, operation, bookkeeping, reporting, equipment, records, and merchandise of state liquor stores and distribution stations and warehouses.

(c) To regulate the importation, purchase, transportation, and storage of alcoholic liquor and the furnishing of alcoholic liquor to state liquor stores, distribution stations, and warehouses established under this act.

(d) To determine the classes, varieties, and brands of alcoholic liquors to

be kept in state warehouses and for sale at state liquor stores and distribution stations.

(e) To determine the nature, form, and capacity of packages containing liquor kept or sold.

(f) To prescribe the kinds and character of official seals or labels to be attached to packages of liquor sold to a licensee as defined in chapter 9, title 23, Idaho Code. No official seals or labels shall be required to be attached to packages of liquor sold to the general public, at a liquor store or a distributing station.

(g) From time to time to fix the sale prices, which shall be uniform throughout the state, of the different classes, varieties, or brands of alcoholic liquor, and to issue and distribute price lists thereof.

(h) To prescribe, prepare, and furnish printed forms and information blanks necessary or convenient for administering this act, and printed copies of the regulations made thereunder. To contract for the printing thereof and of all necessary records and reports.

(i) To regulate the issuance, suspension and revocation of permits and licenses to purchase, manufacture and handle or traffic in alcoholic liquor.

(j) To prescribe the conditions and qualifications necessary for obtaining permits and licenses, and the conditions of use of privileges under them; and to provide for the inspection of the records and the conduct of use of permittees and licensees.

(k) To prescribe the kind, quality, and character of alcoholic liquors which may be purchased or sold under any and all licenses and permits, including the quantity which may be purchased or sold at any one (1) time or within any specified period of time.

History.

1939, ch. 222, § 308, p. 465; am. 1941, ch. 10, § 4, p. 20; am. 1971, ch. 136, § 10, p. 522; am. 1974, ch. 22, § 9, p. 592; am. 2009, ch. 23,

§ 9, p. 53; am. 2009, ch. 282, § 1, p. 849; am. 2010, ch. 19, § 1, p. 32; am. 2010, ch. 79, § 5, p. 133; am. 2012, ch. 113, § 5, p. 311.

STATUTORY NOTES

Amendments.

This section was amended by two 2010 amendments which appear to be compatible and have been compiled together.

The 2010 amendment, by ch. 19, at the end of the first sentence of subsection (g), substituted "licensee as defined in chapter 9, title 23, Idaho Code"; and at the end of the last sentence of subsection (g), deleted "which is not a licensed premises through liquor stores or distributing stations".

The 2010 amendment, by ch. 79, corrected a typographical error in the subsection (i) designation.

The 2012 amendment, by ch. 113, deleted former subsection (a) which read, "To prescribe the duties of the secretary, and to supervise his conduct while in the discharge of his duties" and redesignated the subsequent subsections accordingly; and deleted "clerks, accountants, agents, vendors, inspectors, servants, legal counsel, and other" preceding "personnel" near the beginning of present subsection (a).

Compiler's Notes.

The words "this act" refer to S.L. 1939, ch. 222, which is generally compiled as chapters 1 to 6, title 23, Idaho Code.

23-211. Personnel not to be interested in private liquor traffic. — Neither the director nor any other officer or employee of the division shall, directly or indirectly, individually, or as a member of a partnership or as a shareholder in a corporation, have any private interest whatsoever in the

business of manufacturing, transporting, distributing, or selling of alcoholic liquor; nor shall he receive any kind of profit whatsoever, or have any interest whatsoever in the purchases or sale by the persons herein authorized to purchase and sell alcoholic liquor, except that such provisions shall not prevent any such person from purchasing and keeping in his possession for the personal use of himself, his family, or his guests, of any liquor which may be lawfully purchased.

History.

1939, ch. 222, § 501, p. 465; am. 1941, ch.

10, § 8, p. 20; am. 2009, ch. 23, § 12, p. 53; am. 2012, ch. 113, § 6, p. 311.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 113, deleted

“the secretary” following “the director” near the beginning of the section.

23-214. Officers and employees not personally liable. — Neither the director nor any of the officers or employees of the division shall be liable for damages sustained by any person because of any act done in the performance of their respective duties under this act.

History.

1939, ch. 222, § 504, p. 465; am. 1941, ch.

10, § 9, p. 20; am. 2009, ch. 23, § 14, p. 53; am. 2012, ch. 113, § 7, p. 311.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 113, deleted “secretary” following “the director” near the beginning of the section.

Compiler’s Notes.

The words “this act” refer to S.L. 1939, ch. 222, which is generally compiled as chapters 1 to 6, title 23, Idaho Code.

CHAPTER 3

LOCAL LIQUOR STORES AND DISTRIBUTING STATIONS

SECTION.	SECTION.
23-301. Liquor stores — Notice of intent to locate.	23-306. General conduct and management.
23-304. Qualifications of special distributors.	23-309. Sales.
23-305. Compensation of special distributors.	23-311. Containers.

23-301. Liquor stores — Notice of intent to locate. — (a) The division may establish and maintain liquor stores in any city organized under general or special law. Before any store site or distributing station may be established within a city or unincorporated area that does not have a distributing station, the division shall have printed in the city’s official newspaper, as defined in section 50-213, Idaho Code, a legal notice of the division’s intent to establish a liquor store or distributing station in the city and that a public hearing will be held regarding the proposed liquor store if the requirements specified herein are satisfied. The legal notice shall contain the time, date and place of the hearing and the address where the liquor store or distributing station is proposed to be located, notice of the

right to protest the location, the requirements necessary to be satisfied before a public hearing will be held, and shall be a twenty (20) days' notice as described in section 60-109, Idaho Code. If the lesser of twenty-five (25) people or ten percent (10%) of the eligible voters living in precincts, any part of which is located within a one thousand (1,000) foot radius surrounding the proposed site, sign a petition which protests the proposed site of the liquor store or distributing station and present it to the director or his designated representative, a public hearing shall be held within one (1) week after the last legal notice has been published.

(b) If fifty percent (50%) or more of the eligible voters living in precincts, any part of which is located within a one thousand (1,000) foot radius surrounding the proposed site of the liquor store or distributing station, sign a petition which protests the proposed site of the liquor store or distributing station and present it to the director or his designated representative within five (5) business days after the public hearing, the division shall not place a liquor store or distributing station at the proposed site.

(c) The division may classify liquor stores according to the volume of their sales.

History.
1939, ch. 222, § 601, p. 465; am. 1978, ch. 237, § 1, p. 506; am. 1980, ch. 68, § 1, p. 143;

am. 1980, ch. 301, § 1, p. 778; am. 2009, ch. 23, § 18, p. 53; am. 2012, ch. 113, § 8, p. 311.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 113, deleted "under the management of a vendor" follow-

ing "liquor stores" near the beginning of sub-section (a).

23-304. Qualifications of special distributors. — A special distributor shall have been a resident of the state for at least six (6) months prior to his selection and shall be a person having a reputation for probity, temperance and integrity.

History.
1939, ch. 222, § 604, p. 465; am. 1945, ch.

43, § 1, p. 56; am. 1973, ch. 23, § 1, p. 44; am. 2012, ch. 113, § 9, p. 311.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 113, deleted "vendors and" preceding "special distributors"

in the section heading and "vendor or" preceding "special distributor" in the text.

23-305. Compensation of special distributors. — Special distributors shall receive uniform compensation, which compensation shall be considered a part of the cost of sales, according to classifications fixed by the division.

History.
1939, ch. 222, § 605, p. 465; am. 1993, ch.

238, § 1, p. 824; am. 2009, ch. 23, § 20, p. 53; am. 2012, ch. 113, § 10, p. 311.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 113, deleted “vendors and” preceding “special distributors”

in the section heading and at the beginning of the sentence.

23-306. General conduct and management. — In the conduct and management of liquor stores and distributing stations, special distributors shall be subject to the provisions of this act and the rules and regulations of the division.

History.

1939, ch. 222, § 606, p. 465; am. 2009, ch. 23, § 21, p. 53; am. 2012, ch. 113, § 11, p. 311.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 113, deleted “vendors and” preceding “special distributors”.

Compiler’s Notes.

The words “this act” refer to S.L. 1939, ch. 222, which is generally compiled as chapters 1 to 6, title 23, Idaho Code.

23-309. Sales. — No state liquor store or special distributor shall sell any alcoholic liquor or any other merchandise on behalf of the division except for cash, check, money order, credit card, electronic funds transfer or debit card. In addition, the division shall, under such rules as may be adopted by it, authorize state liquor stores or special distributors to accept a check, credit cards, electronic funds transfer or debit card from persons licensed for the retail sale of liquor by the drink pursuant to chapter 9, title 23, Idaho Code, as payment for purchases from the division. Dishonor of any credit device given by such person shall constitute grounds for suspension or revocation of such person’s license pursuant to section 23-933, Idaho Code, in addition to any other remedy provided by law.

History.

1939, ch. 222, § 609, p. 465; am. 1977, ch. 124, § 1, p. 264; am. 1988, ch. 216, § 1, p.

410; am. 1999, ch. 206, § 1, p. 553; am. 2006, ch. 18, § 3, p. 68; am. 2009, ch. 23, § 25, p. 53; am. 2012, ch. 113, § 12, p. 311.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 113, deleted “vendor of any” preceding “state liquor store”

in the first sentence and deleted “the vendor of a” preceding “state liquor stores” in the second sentence.

23-311. Containers. — No alcoholic liquor shall be sold to any purchaser, who is not a licensee as defined in chapter 9, title 23, Idaho Code, except in a sealed container and no such container shall be opened upon the premises of any state warehouse, store, or distributing station. No alcoholic liquor shall be sold to a licensee as defined in chapter 9, title 23, Idaho Code, except in a sealed container with the official seal or label prescribed by the division.

History.

1939, ch. 222, § 611, p. 465; am. 2009, ch. 23, § 26, p. 53; am. 2009, ch. 282, § 2, p. 849;

am. 2010, ch. 19, § 2, p. 32; am. 2010, ch. 79, § 6, p. 133.

STATUTORY NOTES

Amendments.

This section was amended by two 2010 acts which appear to be compatible and have been compiled together.

The 2010 amendment, by ch. 19, in the first sentence, substituted “who is not” for “which is not”, substituted “licensee as defined in

chapter 9, title 23, Idaho Code” for “licensed premises”; and in the last sentence, substituted “division” for “dispensary”.

The 2010 amendment, by ch. 79, in the first sentence, deleted “division” following “sealed container,” and in the last sentence, substituted “division” for “dispensary.”

CHAPTER 4

LIQUOR FUND

SECTION.

23-404. Distribution of moneys in liquor account.

SECTION.

23-406. Administrative expense.
23-407. Deposit of revenue.

23-404. Distribution of moneys in liquor account. — (1) The moneys received into the liquor account shall be transferred or appropriated as follows:

(a) An amount of money equal to the actual cost of purchase of alcoholic liquor and payment of expenses of administration and operation of the division, as determined by the director and certified quarterly to the state controller, shall be transferred back to the division; provided, that the amount so transferred back for administration and operation of the division shall not exceed the amount authorized to be expended by regular appropriation authorization.

(b) From fiscal year 2006 through fiscal year 2009, forty percent (40%) of the balance remaining after transferring the amounts authorized by paragraph (a) of this subsection shall be transferred or appropriated pursuant to this paragraph (b). Beginning in fiscal year 2010, the percentage transferred pursuant to this paragraph (b) shall increase to forty-two percent (42%) with an increase of two percent (2%) for each subsequent fiscal year thereafter until fiscal year 2014, when such percentage shall be fifty percent (50%).

(i) For fiscal year 2006 and through fiscal year 2009, one million eight hundred thousand dollars (\$1,800,000) shall be appropriated and paid to the cities and counties as set forth in paragraphs (c)(i) and (c)(ii) of this subsection;

(ii) Two million eighty thousand dollars (\$2,080,000) shall be transferred annually to the substance abuse treatment fund, that is created in section 23-408, Idaho Code;

(iii) Six hundred thousand dollars (\$600,000) shall be transferred annually to the state community college account, created in section 33-2139, Idaho Code;

(iv) One million two hundred thousand dollars (\$1,200,000) shall be

transferred annually to the public school income fund, as defined in section 33-903, Idaho Code;

(v) Six hundred fifty thousand dollars (\$650,000) shall be transferred annually to the cooperative welfare account in the dedicated fund;

(vi) Six hundred eighty thousand dollars (\$680,000) shall be transferred annually to the drug court, mental health court and family court services fund;

(vii) Four hundred forty thousand dollars (\$440,000) shall be transferred annually to the drug and mental health court supervision fund that is created in section 23-409, Idaho Code; and

(viii) The balance shall be transferred to the general fund.

(c) The remainder of the moneys received in the liquor account shall be appropriated and paid as follows:

(i) Forty percent (40%) of the balance remaining after the transfers authorized by paragraphs (a) and (b) of this subsection have been made is hereby appropriated to and shall be paid to the several counties. Each county shall be entitled to an amount in the proportion that liquor sales through the division in that county during the state's previous fiscal year bear to total liquor sales through the division in the state during the state's previous fiscal year, except that no county shall be entitled to an amount less than that county received in distributions from the liquor account during the state's fiscal year 1981.

(ii) Sixty percent (60%) of the balance remaining after the transfers authorized by paragraphs (a) and (b) of this subsection have been made is hereby appropriated to and shall be paid to the several cities as follows:

1. Ninety percent (90%) of the amount appropriated to the cities shall be distributed to those cities that have a liquor store or distribution station located within the corporate limits of the city. Each such city shall be entitled to an amount in the proportion that liquor sales through the division in that city during the state's previous fiscal year bear to total liquor sales through the division in the state during the state's previous fiscal year, except that no city shall be entitled to an amount less than that city received in distributions from the liquor account during the state's fiscal year 1981;

2. Ten percent (10%) of the amount appropriated to the cities shall be distributed to those cities that do not have a liquor store or distribution station located within the corporate limits of the city. Each such city shall be entitled to an amount in the proportion that that city's population bears to the population of all cities in the state that do not have a liquor store or distribution station located within the corporate limits of the city, except that no city shall be entitled to an amount less than that city received in distributions from the liquor account during the state's fiscal year 1981.

(2) All transfers and distributions shall be made periodically, but not less frequently than quarterly but, the apportionments made to any county or city, that may during the succeeding three (3) year period be found to have been in error either of computation or transmittal, shall be corrected during

the fiscal year of discovery by a reduction of apportionments in the case of over-apportionment or by an increase of apportionments in the case of under-apportionment. The decision of the director on entitlements of counties and cities shall be final and shall not be subject to judicial review.

History.

I.C., § 23-404, as added by 1982, ch. 255, § 4, p. 653; am. 1983, ch. 117, § 2, p. 258; am. 1984, ch. 120, § 1, p. 276; am. 1994, ch. 180,

§ 37, p. 420; am. 2006, ch. 289, § 1, p. 886; am. 2007, ch. 141, § 1, p. 407; am. 2008, ch. 252, § 1, p. 738; am. 2009, ch. 23, § 31, p. 53; am. 2013, ch. 187, § 1, p. 447.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 187, substituted “state community college account” for

“community college account” in paragraph (1)(b)(iii).

23-406. Administrative expense. — Claims for salaries, wages, and other compensation, premiums on official bonds, traveling and other expenses of the director and other officers and employees, and all other expenditures made by the division in the exercise of its powers hereunder shall be paid from the liquor fund as a part of the cost of the administration of this act.

History.

1939, ch. 222, § 706, p. 465; am. 1941, ch.

10, § 10, p. 20; am. 2009, ch. 23, § 32, p. 53; am. 2012, ch. 113, § 13, p. 311.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 113, deleted “secretary” following “the director” near the middle of the section.

Compiler’s Notes.

The words “this act” refer to S.L. 1939, ch. 222, which is generally compiled as chapters 1 to 6, title 23, Idaho Code.

23-407. Deposit of revenue. — It shall be the duty of all special distributors, officers, agents, and employees to report and pay over to the division, in such manner and pursuant to such rules as may be adopted by it, all revenues derived from the sale of alcoholic beverages, all revenues derived from the sale of all other merchandise sold on behalf of the division, excise taxes, licenses, permits, fees, profits on sales, or other revenues resulting from the operation of this act, and the division shall deposit the same with the state treasurer to the credit of the liquor fund [account].

History.

1939, ch. 222, § 707, p. 465; am. 2006, ch.

18, § 6, p. 68; am. 2009, ch. 23, § 33, p. 53; am. 2012, ch. 113, § 14, p. 311.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Amendments.

The 2012 amendment, by ch. 113, deleted “vendors” following “special distributors” near the beginning of the section.

Compiler’s Notes.

The words “this act” refer to S.L. 1939, ch.

222, which is generally compiled as chapters 1 to 6, title 23, Idaho Code.

The bracketed insertion at the end of the section was added by the compiler to correct the name of the referenced account. See § 23-401.

CHAPTER 6

PENAL PROVISIONS

SECTION.

23-607. Advertising.

23-609. Internal revenue receipt prima facie violation. [Repealed.]

23-610. Possession of liquor not subject to

SECTION.

regulation by division — Illegal — Exceptions.

23-611. Officers may seize illegal alcoholic liquor.

23-607. Advertising. — Except as permitted by federal statute and regulations, there shall be no public advertisement or advertising of alcoholic liquors in any manner or form within the state of Idaho.

(1) No person shall publish, exhibit, or display or permit to be displayed any other advertisement or form of advertisement, or announcement, publication, or price list of, or concerning any alcoholic liquors, or where, or from whom the same may be purchased or obtained, unless permitted so to do by the regulations enacted by the division and then only in strict accordance with such regulations.

(2) This section of the act shall not apply however:

(a) To the division.

(b) To the correspondence or general communications of the division, or its agents and employees.

A violation of this section shall constitute a misdemeanor.

History.

1939, ch. 222, § 907, p. 465; am. 2009, ch. 23, § 49, p. 53; am. 2012, ch. 113, § 15, p. 311.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 113, in paragraph (2)(b), deleted “or telegrams” following “correspondence,” substituted “the division” for “the commission,” and deleted “servants” following “agents”; and deleted former paragraph (2)(c), which read: “To the receipt or transmission of a telegram or telegraphic

copy in the ordinary course of the business of such agents, servants, or employees of any telegraph company.”

Compiler’s Notes.

The words “the act” refer to S.L. 1939, ch. 222, which is generally compiled as chapters 1 to 6, title 23, Idaho Code.

23-609. Internal revenue receipt prima facie violation. [Repealed.]

Repealed by S.L. 2012, ch. 113, § 16, effective July 1, 2012.

History.

1939, ch. 222, § 909, p. 465; am. 1939, ch. 217, § 2, p. 459.

23-610. Possession of liquor not subject to regulation by division — Illegal — Exceptions. — It shall be unlawful for any person, who is not a licensee as defined in chapter 9, title 23, Idaho Code, to possess more than two (2) quarts of alcoholic liquor that has not been subjected to regulation by the division, except public carriers transporting alcoholic liquor for the division. All licensees as defined in chapter 9, title 23, Idaho Code, shall have liquor to which is affixed the official seal or label prescribed by the liquor division.

History.

1939, ch. 222, § 910, as added by 1947, ch. 178, § 1, p. 435; am. 2009, ch. 23, § 51, p. 53;

am. 2009, ch. 282, § 3, p. 849; am. 2010, ch. 19, § 3, p. 32; am. 2010, ch. 79, § 7, p. 133.

STATUTORY NOTES**Amendments.**

This section was amended by two 2010 acts which appear to be compatible and have been compiled together.

The 2010 amendment, by ch. 19, in the heading, substituted “division” for “dispensary”; in the first sentence, substituted “who is not a licensee as defined in chapter 9, title

we, Idaho Code” for “which is not a licensed premises”; in the last sentence, substituted “licensees as defined in chapter 9, title 23, Idaho Code” for “licensed premises”, and substituted “division” for “dispensary”.

The 2010 amendment, by ch. 79, in the section heading and in the last sentence, substituted “division” for “dispensary.”

23-611. Officers may seize illegal alcoholic liquor. — The director of the Idaho state police or any of his agents, any sheriff, constable or other peace officer who shall find any liquor, possessed, manufactured, transported, purchased, sold or disposed of by any person in violation of the provisions of this act, or any other laws of the state of Idaho, may forthwith seize and remove the same and keep the same as evidence, and upon conviction of the person, the said liquor and all packages and receptacles containing the same shall be forfeited to the state of Idaho and, in addition, persons so violating this act shall be subject to the other penalties herein prescribed.

History.

1939, ch. 222, § 911, as added by 1947, ch.

178, § 2, p. 435; am. 2012, ch. 113, § 17, p. 311.

STATUTORY NOTES**Cross References.**

State police, § 67-2901 et seq.

Amendments.

The 2012 amendment, by ch. 113, substituted “the director of the Idaho state police” for “the commissioner” near the beginning of the section.

Compiler's Notes.

The words “this act” refer to S.L. 1939, ch. 222, which is generally compiled as chapters 1 to 6, title 23, Idaho Code.

23-615. Restrictions on sale.

JUDICIAL DECISIONS

Constitutionality.

District court erred in holding that this section was facially unconstitutional for overbreadth, as selling alcohol is not consti-

tutionally protected conduct, U.S. Const. amend. XXI, § 2 and Idaho Const., art. III, § 26. Alcohol Bev. Control v. Boyd, 148 Idaho 944, 231 P.3d 1041 (2010).

CHAPTER 9

RETAIL SALE OF LIQUOR BY THE DRINK

SECTION.

- 23-903. License to retail liquor.
- 23-914. Licensee must purchase from division — Price.

SECTION.

- 23-940. Alcohol beverage control fund.

23-903. License to retail liquor. — (1) The director of the Idaho state police is hereby empowered, authorized, and directed to issue licenses to qualified applicants, as herein provided, whereby the licensee shall be authorized and permitted to sell liquor by the drink at retail and, upon the issuance of such license, the licensee therein named shall be authorized to sell liquor at retail by the drink, but only in accordance with the rules promulgated by the director and the provisions of this chapter. No license shall be issued for the sale of liquor on any premises outside the incorporated limits of any city except as provided in this chapter and the number of licenses so issued for any city shall not exceed one (1) license for each one thousand five hundred (1,500) of population of said city or fraction thereof, as established in the last preceding census, or any subsequent special census conducted by the United States bureau of the census or by an estimate that is statistically valid including adding the number of new residential utility connections or including adding the population of areas annexed into the city after the last census or special census was conducted, except that upon proper application thereof not more than two (2) licenses may be issued for each incorporated city with a population of one thousand five hundred (1,500) or less, unless the retail licensing of liquor by the drink has been previously disapproved under the provisions of sections 23-917, 23-918, 23-919, 23-920 and 23-921, Idaho Code; provided however, that any license heretofore issued may be renewed from year to year without regard to the population or status of the city for which such license is issued. Any license issued and which has remained in effect at its location for a consecutive period of ten (10) years or more shall be deemed to have been validly issued and may be renewed from year to year provided however, that the applicant for the renewal of such license is not otherwise disqualified for licensure pursuant to section 23-910, Idaho Code, and, if the premises required special characteristics for original licensure, other than being either within or without the incorporated limits of a city, that said premises continue to have such special characteristics at the time of the application for renewal.

(2) Nothing herein contained shall prohibit the issuance of a license to the

owner, operator or lessee of an actual bona fide golf course whether located within or without the limits of any city, or located on premises also operated as a winery or ski resort, or to the lessee of any premises situate thereon, whether located within or without the limits of any city. For the purpose of this section, a golf course shall comprise an actual bona fide golf course, which is regularly used for the playing of the game of golf, and having not less than nine (9) tees, fairways and greens laid out and used in the usual and regular manner of a golf course. Nine (9) hole courses must have a total yardage of at least one thousand (1,000) yards, and eighteen (18) hole courses must have a total yardage of at least two thousand (2,000) yards as measured by totaling the tee-to-green distance of all holes. The course must be planted in grass except that it may provide artificial tee mats. Where any such golf course is owned or leased by an association of members and is used or enjoyed by such members or their guests, none of the disqualifications contained in section 23-910, Idaho Code, shall apply to such association as a licensee where such disqualifications, or any of them, would apply only to a member of such association where such member has no interest therein except as a member thereof.

(3) Also for the purpose of this section, a ski resort shall comprise real property of not less than ten (10) acres in size, exclusive of the terrain used for skiing and upon which the owner, operator or lessee of the ski resort has made available himself or through others, including, but not limited to, the owners of condominiums, permanent bona fide overnight accommodations available to the general public for one hundred (100) persons or more, and which real property is contiguous to or located within the area in which skiing occurs, and which real property is regularly operated as a ski resort in the winter time, and where the owner, operator or lessee of the ski resort is also the owner, operator or lessee of the area served by a bona fide chair ski lift facility or facilities. Alternatively, for the purpose of this section, a ski resort may also be defined as a downhill ski area, open to the public, comprising real property of not less than two hundred fifty (250) skiable acres, operating two (2) or more chair lifts with a vertical lift of one thousand (1,000) feet or more, and capable of transporting a minimum of one thousand eight hundred (1,800) skiers per hour. A ski resort qualifying under this definition shall also have on the premises a lodge facility providing shelter and food service to the public, the operator of which shall also be the valid owner or lessee of the grounds and facilities upon which the ski resort offers downhill skiing services to the public. The fees for licenses granted to ski resorts shall be the same as those prescribed for golf courses as set forth in section 23-904, Idaho Code. Not more than one (1) licensed premises shall be permitted on any golf course or any ski resort or within the area comprising the same.

(4) Nothing herein contained shall prohibit the issuance of a license to the owner, operator or lessee of an actual bona fide equestrian facility located on not less than forty (40) contiguous acres, with permanently erected seating of not less than six thousand (6,000) seats, no part of which equestrian facility or the premises thereon is situate within the incorporated limits of any city, and which facility shall have at least three (3) days per year of a

professionally sanctioned rodeo. Not more than one (1) licensed premises shall be permitted at any equestrian facility or within an area comprising such a facility. The fees for licenses granted to equestrian facilities shall be the same as those prescribed for golf courses as set forth in section 23-904, Idaho Code.

(5) Nothing herein contained shall prohibit the issuance of a license to the owner, operator or lessee of a restaurant operated on an airport owned or operated by a county or municipal corporation or on an airport owned or operated jointly by a county and municipal corporation, and which said airport is served by a trunk or local service air carrier holding a certificate of public convenience and necessity issued by the civil aeronautics board of the United States of America. Not more than one (1) license shall be issued on any airport.

(6) Nothing herein contained shall prohibit the issuance of one (1) club license to a club as defined in section 23-902, Idaho Code. The holder of a club license is authorized to sell and serve alcoholic beverages for consumption only within the licensed establishment owned, leased or occupied by the club, and only to bona fide members of the club, and to serve and to sell alcoholic beverages for consumption to bona fide members' guests. A club license issued pursuant to the provisions of this section is not transferable and may not be sold. Any club license issued pursuant to the provisions of this section will revert to the director when, in his judgment, the licensee ceases to operate as a bona fide club as defined in section 23-902, Idaho Code. No club may hold a liquor license and a club license simultaneously. A club which on July 1, 1983, holds a liquor license, may continue to possess that license. Any club which possesses a liquor license on January 1, 1983, or thereafter, and then sells that liquor license, may not obtain a club license, and the director shall not issue a club license to that club for a period of five (5) years following such sale. The fee for any license issued to a qualifying club within an incorporated municipality shall be as prescribed in subsections (1), (2) and (3) of section 23-904, Idaho Code. The fee for any license issued to a qualifying club not situate within an incorporated municipality shall be as specified for golf courses under section 23-904(6), Idaho Code. The provisions of section 23-916, Idaho Code, regarding county and city licenses, shall pertain to club licenses. The burden of producing sufficient documentation of qualifications for club licensure shall be with the club applicant.

(7) Nothing in this chapter to the contrary shall prohibit the issuance of a license to the owner, operator or lessee of an actual bona fide convention center which is within the incorporated limits of a city having a population of three thousand (3,000) or greater, and which city does not have located therein a convention center with a valid convention center license to sell liquor by the drink. For the purpose of this section, a convention center means a facility having at least thirty-five thousand (35,000) square feet of floor space or a facility having at least one hundred twenty (120) sleeping rooms and an adjoining meeting room which will accommodate not less than three hundred fifty (350) persons, whether or not such room may be partitioned into smaller rooms, and provided that such meeting room shall

contain at least three thousand (3,000) square feet of floor space. Such license must be placed in actual use in said convention center within one (1) year from the date of its issuance. The fee for any license issued to a qualifying convention center shall be as prescribed in subsection (3) of section 23-904, Idaho Code. The holder of a convention center license shall not be eligible for the issuance of a license in the same city pursuant to any other provision of this chapter. For purposes of this section, the term "holder" shall include an owner, operator or lessee and shall include a stockholder, director or officer of a corporation or a partner in a partnership, which corporation or partnership has been issued a convention center license pursuant to this chapter. Not more than one (1) licensed premises shall be permitted on any convention center or within the area comprising the same, including convention centers that also comprise golf courses or ski resorts as herein defined.

(8) Nothing in this chapter shall prohibit the issuance of a license to the owner, operator or lessee of a food, beverage and/or lodging facility that has been in continuous operation in the same location for at least seventy-five (75) years, except for temporary closings for refurbishing or reconstruction, or a food, beverage and lodging facility serving the public by reservation only, having a minimum of five (5) rooms operating in a structure that has been in existence for at least seventy-five (75) years and has been on the historic register for a minimum of ten (10) years, is situated within five hundred (500) yards of a natural lake containing a minimum of thirty-six thousand (36,000) acre feet of water when full with a minimum of thirty-two (32) miles of shoreline, and is located in a county with a minimum population of sixty-five thousand (65,000). The provisions of section 23-910, Idaho Code, shall apply to licenses issued to continuous operation facilities. The fees shall be the same as those prescribed for golf courses as set forth in section 23-904, Idaho Code.

(9) Nothing in this chapter shall prohibit the issuance of a license to a federally recognized Indian tribe as defined in section 67-4001, Idaho Code, which is an owner, operator or lessee of a food, conference and lodging facility located within the boundaries of the Indian tribe's reservation and containing a minimum of thirty-five thousand (35,000) square feet and fifty (50) guest rooms. Licenses issued to Indian tribes are not transferable.

(10) Nothing in this chapter shall prohibit the issuance of a license to the owner, operator or lessee of the lodging, dining and entertainment facilities owned by a gondola resort complex and operated in conjunction with the other public services provided by a gondola resort complex located within the ownership/leasehold boundaries of a gondola resort complex.

A gondola resort complex means an actual bona fide gondola capable of transporting people for recreational and/or entertainment purposes at least three (3) miles in length with a vertical rise of three thousand (3,000) feet, portions of which may be located within or over the limits of one (1) or more cities.

(11) Nothing in this chapter shall prohibit the issuance of a license to the owner, operator or lessee of a winery also operating a golf course on the premises.

(12) Subject to approval of the mayor and city council, nothing in this chapter shall prohibit the issuance of a license to the owner, operator or lessee of a food, conference and lodging facility constructed after May 1, 2000, containing a minimum of thirty-five thousand (35,000) square feet and fifty-five (55) guest rooms with a minimum taxable value of three million dollars (\$3,000,000) in a city with a population of less than five thousand (5,000) according to the most recent census.

(13) The provisions of section 23-910, Idaho Code, shall apply to licenses issued under the provisions of this section. The fees shall be the same as those prescribed for golf courses as set forth in section 23-904, Idaho Code. Except for licenses issued pursuant to subsection (1) of this section, licenses issued under the provisions of this section are not transferable to any other location, facility or premise.

History.

1947, ch. 274, § 3, p. 870; am. 1957, ch. 151, § 1, p. 250; am. 1959, ch. 118, § 1, p. 254; am. 1963, ch. 215, § 1, p. 622; am. 1965, ch. 35, § 1, p. 52; am. 1972, ch. 34, § 1, p. 53; am. 1974, ch. 27, § 18, p. 811; am. 1978, ch. 126, § 2, p. 285; am. 1983, ch. 167, § 1, p. 473; am. 1983, ch. 203, § 2, p. 551; am. 1984, ch. 244, § 1, p. 590; am. 1989, ch. 164, § 1, p. 411; am. 1989, ch. 207, § 1, p. 507; am. 1989, ch. 301, § 1, p. 749; am. 1990, ch. 252, § 1, p. 722; am.

1990, ch. 255, § 1, p. 729; am. 1990, ch. 392, § 1, p. 1098; am. 1992, ch. 233, § 1, p. 697; am. 1993, ch. 240, § 1, p. 845; am. 1995, ch. 358, § 1, p. 1214; am. 1996, ch. 349, § 1, p. 1167; am. 1997, ch. 263, § 1, p. 749; am. 2000, ch. 469, § 63, p. 1450; am. 2004, ch. 44, § 1, p. 165; am. 2006, ch. 449, § 3, p. 1333; am. 2008, ch. 335, § 1, p. 920; am. 2008, ch. 405, § 1, p. 1110; am. 2013, ch. 167, § 1, p. 382; am. 2013, ch. 278, § 1, p. 718.

STATUTORY NOTES

Amendments.

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 167, added the subsection designations and added subsection (9).

The 2013 amendment, by ch. 278, added the subsection designations; deleted the former third sentence in subsection (4), which read: "The license shall be solely for the equestrian facility and shall not be transferred to any

other location"; deleted "No license issued to a convention center hereunder shall be transferable to another location or facility, nor shall" from the beginning of the fifth sentence in subsection (7); deleted the former last sentence in subsection (8), which read: "Licenses issued to continuous operation facilities are not transferable"; and rewrote the last sentence in subsection (13) which formerly read: "Licenses issued under the provisions of this section are not transferable."

23-914. Licensee must purchase from division — Price. — All liquor sold by any licensee shall be purchased from the division through its regular retail stores and distributing stations at the posted price thereof. The division is hereby authorized and directed to make such sales pursuant to section 23-309, Idaho Code, upon a special permit issued to such licensee in such form as shall be prescribed by the director of the division. The posted price as used herein shall mean the retail price of such liquor as fixed and determined by the division.

It shall be unlawful for any licensee to sell, or keep for sale, or have on his premises for any purpose whatsoever, any liquor except that purchased as herein authorized and provided, and any licensee found in possession of, selling or keeping for sale any liquor not purchased as herein authorized shall be guilty of a felony and upon conviction thereof shall be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars

(\$5,000), or by imprisonment in the state prison for not more than five (5) years, or by both such fine and imprisonment. Any license issued to such person shall be immediately and permanently revoked. The amount of liquor to be sold to licensees hereunder in any city or village shall be determined by the director or other executive officer of the division, but such sales shall be regulated so as to maintain adequate stocks of merchandise for sale to persons other than said licensees.

The provisions of this section notwithstanding, railroad companies shall have the right to have in their possession liquors other than those purchased from the division.

History.
1947, ch. 274, § 14, p. 870; am. 1949, ch. 277, § 2, p. 567; am. 1988, ch. 216, § 2, p.

410; am. 2009, ch. 23, § 53, p. 53; am. 2012, ch. 113, § 18, p. 311.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 113, in the first paragraph, substituted “distributing stations” for “distributors” in the first sentence

and substituted “pursuant to section 23-309, Idaho Code” for “for cash, check or money order to be paid at the time of purchase” in the second sentence.

23-933. Suspension, revocation, and refusal to renew licenses.

JUDICIAL DECISIONS

ANALYSIS

Applicability.
Constitutionality.

Applicability.
This section does not prescribe a process for dealing with removal of an applicant from a priority list and, therefore, presents no administrative remedy to exhaust before seeking judicial redress of the administrative action. *Fuchs v. State, Dep’t of Ida. State Police*, 152 Idaho 626, 272 P.3d 1257 (2012).

Constitutionality.
District court erred in holding that § 23-615 was facially unconstitutional for overbreadth, as selling alcohol is not constitutionally protected conduct, *U.S. Const. amend. XXI, § 2* and *Idaho Const., art. III, § 26. Alcohol Bev. Control v. Boyd*, 148 Idaho 944, 231 P.3d 1041 (2010).

23-940. Alcohol beverage control fund. — (1) There is hereby created in the state treasury the alcohol beverage control fund. All moneys from license and transfer fees that are collected by the director pursuant to the provisions of this chapter shall be paid over to the state treasurer for deposit in the alcohol beverage control fund. Expenditures of moneys in the fund shall be subject to legislative appropriation for the use of the Idaho state police alcohol beverage control bureau in carrying out the provisions of title 23, Idaho Code, and the rules promulgated by the director thereunder. At the beginning of each fiscal year, those moneys in the alcohol beverage control fund that exceed two hundred percent (200%) of that fiscal year appropriation, as certified by the state treasurer, shall be transferred to the general fund.

(2) All other moneys collected by the director pursuant to the provisions

of this chapter shall be paid over to the state treasurer for deposit in the general fund.

History.

1947, ch. 274, § 37, p. 870; am. 1974, ch. 27, § 38, p. 811; am. 2012, ch. 160, § 1, p. 435.

STATUTORY NOTES**Cross References.**

General fund, § 67-1205.

State treasurer, § 67-1201 et seq.

moneys collected by the director under this act shall be paid over to the state treasurer and placed to the credit of the general fund.”

Amendments.

The 2012 amendment, by ch. 160, rewrote the section heading and the section text which formerly read: “**Disposition of funds.** All

Compiler’s Notes.

For more on the alcohol beverage control bureau, see <http://www.isp.idaho.gov/abc>.

CHAPTER 10**BEER****SECTION.**

23-1003. Brewers’, dealers’ and wholesalers’ licenses.

23-1007. Sales by dealers and wholesalers — Prohibited unless obtained from licensees — Consumption on premises prohibited — Minimum sale on licensed premises of unbroken packages or kegs.

SECTION.

23-1008. Tax — Distribution — Rules — Reports.

23-1018. Sale of keg beer — Penalties.

23-1025. License and transfer fees — Alcohol beverage control fund.

23-1031. Extension of credit.

23-1033. Financial interest in or aid to retailers prohibited — Certain aid permitted.

23-1003. Brewers’, dealers’ and wholesalers’ licenses. — (a) Before any brewer shall manufacture or any dealer or wholesaler import or sell beer within the state of Idaho he shall apply to the director for a license so to do. The application form shall be prescribed and furnished by the director and require that the applicant therein show that he possesses all the qualifications and none of the disqualifications of a licensee. To determine qualification for a license, the director shall cause an investigation that shall include a fingerprint-based criminal history check of the Idaho central criminal history database and the federal bureau of investigation criminal history database. Each person listed as an applicant on an initial application shall submit a full set of fingerprints and the fee to cover the cost of the criminal history background check for such person with the application. The application shall also be accompanied by the required licensee fee; provided, that where the applicant is or will be within more than one (1) of the foregoing classifications he shall apply for each classification but shall pay only one (1) license fee, which shall be for the classification applied for requiring the highest fee. If the director is satisfied that the applicant possesses the qualifications and none of the disqualifications for such license, he shall issue a license for each classification applied for, subject to the restrictions and upon the conditions in this act specified, which license or licenses shall be at all times prominently displayed in the place of business of the licensee.

(b) Each wholesaler shall, in addition to the application, file with the director a notice in writing signed by the dealer or brewer and the wholesaler stating the geographic territory within which the wholesaler will distribute beer to retailers. Said territory will be the territory agreed upon between the dealer or brewer and the wholesaler and may not be changed or modified without the consent of both the dealer or brewer and the wholesaler. Provided however, nothing contained herein shall be interpreted to prohibit a brewer or dealer from permitting more than one (1) distributor for the same geographic territory.

(c) In the event that a wholesaler sells beer to a retailer who is located outside the geographical territory designated by such wholesaler on the notice provided for in subsection (b) of this section, the dealer or wholesaler who has designated the geographical territory in which the sale occurred may apply to a district court of this state for the issuance of an injunction enjoining sales of beer by the wholesaler outside of his designated geographical territory. The procedure for issuance of an injunction pursuant to this act shall be subject to the Idaho rules of civil procedure. Upon proof to the court that a wholesaler has made a sale of beer outside his designated geographical territory, the court shall issue an injunction directed to the wholesaler prohibiting sales of beer outside his designated geographical territory.

(d) Any brewer licensed within the state of Idaho who produces fewer than thirty thousand (30,000) barrels of beer annually, upon payment of a retailer's annual license fee, may be issued a brewer's retail beer license for the retail sale of the products of his brewery at his licensed premises or one (1) remote retail location, or both. Any brewer selling beer at retail or selling to a retailer must pay the taxes required in section 23-1008, Idaho Code, but need not be licensed as a wholesaler for the purpose of selling beer at the brewery or at one (1) remote retail location.

(e) Any brewer licensed within the state of Idaho who produces fewer than thirty thousand (30,000) barrels of beer annually, may be issued a brewer's pub license. Upon payment of a retailer's annual license fee, and subject to the fees in sections 23-1015 and 23-1016, Idaho Code, a brewer may, at his licensed brewery, at one (1) remote retail location, or both, sell at retail the products of any brewery by the individual bottle, can or glass. Any brewer selling beer at retail or selling to a retailer must pay the taxes required in section 23-1008, Idaho Code, on the products of his brewery, but need not be licensed as a wholesaler for the purpose of selling beer at the brewery or at one (1) remote retail location.

(f) A brewer licensed under the provisions of subsection (d) or (e) of this section may be licensed as a wholesaler for the sale of beer to retailers other than at the licensed brewery and one (1) remote retail location and shall not be required to pay an additional fee therefor. Such brewer shall, however, comply with and be subject to all other regulations or provisions of law which apply to a wholesaler's license, save and except as such laws may restrict such sales at the licensed brewery or one (1) other remote retail location. The holder of a brew pub license shall not be disqualified from holding a retail wine license or wine by the drink license for the sale of wine

at the brew pub premises on the grounds that said licensee is also licensed as a wholesaler.

History.

1935, ch. 132, § 3, as added by 1943, ch. 167, § 2, p. 349; am. 1972, ch. 370, § 1, p. 1087; am. 1974, ch. 27, § 42, p. 811; am. 1987, ch. 22, § 1, p. 29; am. 1989, ch. 290, § 1, p. 716; am. 2001, ch. 284, § 2, p. 1014; am. 2013, ch. 187, § 2, p. 447.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 187, substituted “shall be subject to the Idaho rules of civil procedure” for “shall be subject to the provisions of chapter 4, title 8, Idaho Code, and the Idaho Rules of Civil Procedure.” in subsection (c).

23-1007. Sales by dealers and wholesalers — Prohibited unless obtained from licensees — Consumption on premises prohibited — Minimum sale on licensed premises of unbroken packages or kegs. — Except as provided in section 23-1007A, Idaho Code, it shall be unlawful for any dealer or wholesaler to sell for use within the state of Idaho any unbroken packages or kegs of beer produced, manufactured, imported or bought by such dealer except to licensed dealers, wholesalers, retailers to whom a license has been issued by the director, or to employees of the wholesaler or dealer; nor shall any dealer or wholesaler allow for a consideration such beer to be consumed upon the premises of such dealer or wholesaler; provided, however, that any dealer or wholesaler shall be allowed to make sales of beer in kegs of not less than five (5) gallons to a consumer at his licensed premises. Licensed brewers may sell at retail only as provided in section 23-1003(d) and (e), Idaho Code.

History.

1935, ch. 132, § 3-d, as added by 1943, ch. 167, § 2, p. 349; am. 1965, ch. 292, § 1, p. 778; am. 1982, ch. 307, § 1, p. 772; am. 1987, ch. 22, § 2, p. 29; am. 1991, ch. 279, § 1, p. 721; am. 2013, ch. 95, § 1, p. 232.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 95, substituted “five (5) gallons” for “seven and three quarters (7 3/4) gallons” near the end of the first sentence.

23-1008. Tax — Distribution — Rules — Reports. — (1) A tax of four dollars and sixty-five cents (\$4.65) per barrel of thirty-one (31) gallons, and a like rate for any other quantity or fraction thereof, is hereby levied and imposed upon each and every barrel of beer sold for use within the state of Idaho.

Any wholesaler who shall sell beer, upon which the tax herein imposed has not been paid and any person who shall purchase, receive, transport, store or sell any beer upon which the tax herein imposed has not been paid, shall be guilty of a misdemeanor, and any beer so purchased, received, transported, stored or possessed or sold shall be subject to seizure by the commission, any inspector or investigator of the commission, or by any sheriff, constable or other police officer, and the same may be removed and

kept for evidence. Upon conviction of any person for violation of the provisions of this section, the said beer, and all barrels, kegs, cases, cartons and cans containing the same shall be forfeited to the state of Idaho, and, in addition, the person so convicted shall be subject to the other penalties in this chapter prescribed.

Beer and all barrels, kegs, cases, cartons or cans so forfeited to the state of Idaho shall be sold by the commission at public auction to any brewer, wholesaler or retailer, licensed under the provisions of this chapter, making the highest bid. Such sale shall be held at such place and time as may be designated by the commission after reasonable notice thereof given in such manner and for such time as the commission may by rule prescribe. From the purchase price received upon such sale, the commission shall first deduct an amount sufficient to pay the tax due on such beer, and to pay all costs incurred in connection with such sale. The commission shall deposit the balance remaining with the state treasurer, who shall place the same in the general fund of the state of Idaho, and it shall become a part thereof.

(2) The revenues received from the taxes, interest, penalties, or deficiency payments imposed by this section shall be distributed as follows:

(a) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by law to be paid by the state tax commission shall be paid through the state refund account and those moneys are continuously appropriated.

(b) The balance remaining after distributing the amount in paragraph (a) of this subsection shall be distributed as follows:

(i) Twenty percent (20%) shall be distributed to the substance abuse treatment fund which is created in section 23-408, Idaho Code;

(ii) Thirty-three percent (33%) shall be distributed to the permanent building fund; and

(iii) The remainder shall be distributed to the general fund.

(3) The commission is empowered to prescribe rules:

(a) For reports by carriers for hire and also all other carriers owned and/or employed, directly or indirectly, by out-of-state brewers, dealers or other persons, of all deliveries of beer in and into the state of Idaho, stating especially the origin and destination of the beer, the quantity thereof, and also the names and addresses, respectively, of the consignors and consignees.

(b) For reports by out-of-state brewers and manufacturers of beer, of all shipments by them of beer into the state of Idaho, stating especially the matters mentioned in paragraph (a) of this subsection.

History.

1935, ch. 132, § 4, p. 312; am. 1949, ch. 192, § 1, p. 462; am. 1949, ch. 281, § 1, p. 575; am. 1961, ch. 43, § 3, p. 66; am. 1980, ch. 239, § 1,

p. 554; am. 1980, ch. 391, § 1, p. 993; am. 1986, ch. 73, § 3, p. 201; am. 1987, ch. 260, § 2, p. 545; am. 2007, ch. 141, § 5, p. 407; am. 2013, ch. 10, § 1, p. 20.

STATUTORY NOTES

Cross References.

General fund, § 67-1205.

Amendments.

The 2013 amendment, by ch. 10, in subsec-

tion (1), substituted “this chapter” for “this act” near the end of the last sentence in the second paragraph and near the end of the first sentence in the third paragraph; substituted “fund” for “account” near the end of the last paragraph in subsection (1) and in paragraphs (ii) and (iii) in subsection (2)(b); inserted “the provisions of” near the beginning

of the second sentence in the second paragraph of subsection (1); inserted “state” preceding “tax commission” near the middle of the second sentence in paragraph (2)(a); and deleted “and it shall be the commission’s duty” following “is empowered” in the introductory paragraph of subsection (3).

23-1018. Sale of keg beer — Penalties. — (1) Retail and wholesale licensees selling keg beer for consumption off licensed premises shall place an identification tag onto all kegs of beer at the time of sale and require the signing of a receipt therefor by the purchaser in order to allow kegs to be traced if the contents are used in violation of this act. The keg identification shall be in the form of a numbered label prescribed and supplied by the director of the Idaho state police, which identifies the seller and which is removable or obliterated when the keg is processed for refilling. The receipt shall be on a form prescribed and supplied by the director of the Idaho state police and shall include the name and address of the purchaser and such other information as may be required by the director of the Idaho state police.

(2) Any licensee selling keg beer for off-premises consumption who fails to require the signing of a receipt at the time of sale and fails to place a numbered identification label onto the keg shall be subject to having his license suspended as set forth in section 23-1038, Idaho Code.

(3) Possession of a keg containing beer which is not identified as required by subsection (1) of this section is a misdemeanor.

(4) Any purchaser of keg beer who knowingly provides false information on the receipt required by subsection (1) of this section shall be guilty of a misdemeanor.

(5) As used in this section, “keg” means any brewery-sealed, individual container of beer having a liquid capacity of five (5) gallons or more.

History.

I.C., § 23-1018, as added by 1981, ch. 76, § 1, p. 108; am. 1989, ch. 314, § 1, p. 810; am.

1990, ch. 428, § 1, p. 1184; am. 2000, ch. 469, § 70, p. 1450; am. 2013, ch. 95, § 2, p. 232.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 95, substituted “five (5) gallons” for “seven and three quarters (7 3/4) gallons” in subsection (5).

Compiler’s Notes.

The words “this act” refer to S.L. 1981, ch. 76, which is compiled as this section.

23-1025. License and transfer fees — Alcohol beverage control fund. — All moneys from license and transfer fees that are collected by the director pursuant to the provisions of this chapter shall be paid over to the state treasurer for deposit in the alcohol beverage control fund created in section 23-940, Idaho Code. All other moneys collected by the director pursuant to the provisions of this chapter shall be paid over to the state treasurer for deposit in the general fund.

History.

I.C., § 23-1025, as added by 2012, ch. 160,
§ 2, p. 435.

STATUTORY NOTES**Cross References.**

General fund, § 67-1205.

State treasurer, § 67-1201 et seq.

23-1031. Extension of credit. — (1) No sale or delivery of beer shall be made to any licensed retailer, except for cash paid at the time of or prior to delivery thereof, or except as provided by electronic funds transfer in accordance with subsection (3) of this section, and in no event shall any brewer, wholesaler or dealer licensed in the state and engaged in the sale of beer for resale extend any credit on account of such beer to a licensed retailer, nor shall any licensed retailer accept or receive delivery of such beer except when payment therefor is made in cash at the time of or prior to delivery thereof, or by electronic funds transfer in accordance with subsection (3) of this section.

(2) The acceptance of a first party check from a licensed retailer by a brewer, wholesaler or dealer licensed in the state and engaged in the sale of beer for resale, or the use of a debit card by a licensed retailer, shall not be deemed an extension or acceptance of credit pursuant to this section.

(3) The acceptance and use of an electronic funds transfer shall not be deemed an extension or acceptance of credit pursuant to this section, provided such transfer is initiated and completed promptly and in no event completed later than five (5) business days following delivery of such beer. Any attempt by a licensed retailer to delay payment of an electronic funds transfer pursuant to this section for any period of time beyond the time set forth in this subsection, shall be deemed an acceptance of credit by the licensed retailer.

(4) Any extension or acceptance of credit in violation hereof shall constitute the giving and receiving of aid or assistance to or by a licensed retailer prohibited by the provisions of section 23-1033, Idaho Code.

History.

I.C., § 23-1031, as added by 1961, ch. 299,
§ 5, p. 543; am. 1965, ch. 176, § 1, p. 362; am.

1999, ch. 206, § 2, p. 553; am. 2011, ch. 255,
§ 1, p. 699; am. 2013, ch. 288, § 1, p. 760.

STATUTORY NOTES**Amendments.**

The 2011 amendment, by ch. 255, added the subsection designations to the existing provisions, inserted “or except as provided by electronic funds transfer in accordance with subsection (3) of this section” and added “or by electronic funds transfer in accordance with subsection (3) of this section” in subsection (1); substituted “or the use of a debit card” for

“or the use of electronic funds transfer or debit card” and substituted “pursuant to this section” for “hereunder” in subsection (2); and added subsection (3).

The 2013 amendment, by ch. 288, substituted “completed promptly” for “completed as promptly as is reasonably practical” in the first sentence in subsection (3).

23-1033. Financial interest in or aid to retailers prohibited — Certain aid permitted. — (1) Except as provided in sections 23-1003(d),

and 23-1003(e), Idaho Code, it shall be unlawful for any brewer, dealer, wholesaler, or the holder of any certificate of approval, directly or indirectly, or through an affiliate, subsidiary, officer, director, agent or employee:

- (a) To have any financial interest in any licensed retailer's business, or to own or control any real property upon which a licensed retailer conducts his business, except such property as shall have been so owned or controlled continuously for more than one (1) year prior to July 1, 1975; provided however, that a brewer licensed pursuant to section 23-1003(d) or (e), Idaho Code, may be permitted to have a financial interest in one (1) additional brewery licensed pursuant to section 23-1003(d) or (e), Idaho Code; or
- (b) To aid or assist any licensed retailer by giving such retailer, or any employee thereof, any discounts, premiums or rebates in connection with any sale of beer; or
- (c) To aid or assist any licensed retailer by furnishing, giving, renting, lending or selling any equipment, signs, supplies, services, or other thing of value to the retailer which may be used in conducting the retailer's retail beer business, except as expressly permitted by this chapter; or
- (d) To enter into any lease or other agreement with any retail licensee to control the product or products sold by such retailer; or
- (e) To provide for any rental or other charge to be paid to or by the retailer for product display or advertising display space.

(2) A brewer, dealer, or wholesaler as an incident to merchandising in the ordinary course of business, and if available to all licensed retailers without discrimination, may sell to a retailer equipment, supplies, or clothing which may be used in conducting the retailer's retail business. A brewer, dealer or wholesaler may not sell such equipment or supplies at a price, or under terms, intended or designed to encourage or induce the retailer to use products of the seller to the exclusion of the products of other brewers, dealers or wholesalers. In no event shall the sales price be less than the reasonable value of such equipment or supplies.

(3) Notwithstanding the provisions of subsection (2) of this section, a brewer, dealer, or wholesaler, as an incident to merchandising in the ordinary course of business, and if available to all retailers within the brewer, dealer or wholesaler's service area, without discrimination, may lend, give, furnish or sell to a retailer, the following items:

- (a) Necessary accessory equipment, such as shaft blowers, tapping devices, valves, beer hoses, washers, couplings, clamps, air hoses, vents, faucets, CO₂ gas regulators, picnic or party pumps, together with necessary nonmechanical or nonenergized equipment to enable cooling of beer, and CO₂ gas or ice when the same is furnished at the current retail price and as a bona fide sale in the regular course of business;
- (b) Signs, posters, placards, designs, devices, decorations or graphic displays bearing advertising matter and for use in windows or elsewhere in the interior of a retail establishment. The brewer, dealer or wholesaler shall not directly or indirectly pay or credit the retailer for displaying such materials or for any expense incidental to their operation;
- (c) Newspaper cuts, mats or engraved blocks for use in retailer's advertisements;

- (d) Items such as sports schedules, posters, calendars, informational pamphlets, decals and other similar materials for display at the point of sale which bear brand advertising for beer prominently displayed thereon, and which items are intended for use by the retailer's customers off the licensed premises and which items are made available to the retailer's customers for such purpose;
- (e) Temporary signs or banners displaying a brewer's, dealer's or wholesaler's name, trademark or label, which signs may be permitted to be temporarily displayed on the exterior portion of the retailer premises in connection with a special event, in accordance with such rules relating thereto as may be established by the director.
- (4) A distributor may perform services incident to or in connection with the following:
- (a) The stocking, rotation and restocking of beer sold and delivered to such licensed retailer on or in such licensed retailer's storeroom, sales-room shelves or refrigerating units, including the marking or remarking of containers of such beer to indicate the selling price as established by the retailer and to the arranging, rearranging, or relocating of advertising displays referred to in this section. For the purposes of this paragraph, a wholesaler may, with the permission of the retailer, and in accordance with space allocations directed by the retailer, set, remove, replace, reset or relocate all beer upon the shelves of the retailer. Labor performed or schematics prepared by the wholesaler relating to conduct authorized pursuant to this paragraph shall not constitute prohibited conduct or unlawful aid to a retailer;
- (b)(i) The inspection of a licensed retailer's draught equipment to insure sanitation and quality control;
- (ii) The instruction of licensed retailers in the proper use, maintenance and care of draught equipment, glasses and products used in the sale and dispensing of beer and the preparation and distribution of written information or instructions to licensed retailers with respect thereto;
- (iii) The tapping of kegs;
- (iv) A wholesaler may perform such services as may be required to maintain sanitation or quality control and which are incident to the repair and cleaning of a retailer's draught beer equipment and may furnish or sell the necessary equipment and repair parts and cleaning supplies required in the performance of such services.
- (5) A wholesaler may assist a retailer by temporarily providing storage of the retailer's beer for a period not in excess of seven (7) days in the event that such storage is necessary to maintain the quality of such beer during a temporary loss or failure of the retailer's refrigeration equipment.
- (6) A brewery, dealer or wholesaler may furnish or give to a retailer authorized to sell beer for consumption on the licensed premises, for sampling purposes only, a container of beer containing not more than sixty-four (64) ounces, not currently being sold by the retailer, and which container is clearly marked "NOT FOR SALE—FOR SAMPLING PURPOSES ONLY."
- (7) The word "ale" or "malt liquor" may be substituted for "beer" on any sign used in connection with any advertising herein permitted, provided

reference shall be to ale or malt liquor which has an alcoholic content not greater than the limitation prescribed in section 23-1002, Idaho Code.

(8) Every violation of the provisions of this section by a dealer, brewer or wholesaler, in which a licensed retailer shall have actively participated shall constitute a violation on the part of such licensed retailer.

History.

I.C., § 23-1033, as added by 1975, ch. 151, § 3, p. 383; am. 1976, ch. 34, § 1, p. 71; am. 1978, ch. 59, § 1, p. 115; am. 1984, ch. 232,

§ 1, p. 560; am. 1987, ch. 22, § 3, p. 29; am. 1991, ch. 159, § 1, p. 380; am. 1994, ch. 361, § 1, p. 1131; am. 2012, ch. 191, § 1, p. 515.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 191, added the proviso at the end of paragraph (1)(a).

CHAPTER 13

COUNTY OPTION KITCHEN AND TABLE WINE ACT

SECTION.

- 23-1302. Purpose and construction of act.
- 23-1307. Qualifications for retail wine license, wine by the drink license, and distributor's license.
- 23-1314. Records and inspection of wineries, importers and distributors.
- 23-1319. Excise tax — Sales included — Re-

SECTION.

- fund for export sales — Re-fund for breakage or spoilage — Distribution of revenue.
- 23-1324. License and transfer fees — Alcohol beverage control fund.
- 23-1326. Credit sales to retailers prohibited.
- 23-1327. Sale of wine in original container and size of containers.

23-1302. Purpose and construction of act. — The purpose of this act is to regulate the importation, distribution and sale, both at wholesale and retail, of wines while reserving to each county of this state the right to prohibit the distribution or sale of wine within its borders. This act shall not be construed to affect laws regulating the retail sale of alcoholic beverages, nor shall it be construed to in any way enlarge the class of persons who may lawfully buy, possess or consume any variety of wine whatever its alcoholic content.

History.

1971, ch. 156, § 2, p. 760; am. 2011, ch. 130, § 3, p. 363.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 130, in the first sentence, deleted “customarily used in

home and family dining and cooking” following “of wines” and substituted “its borders” for “their borders.”

23-1307. Qualifications for retail wine license, wine by the drink license, and distributor's license. — (1) No retail wine license, wine by the drink license, or wine distributor's license shall be issued to an applicant who at the time of making the application:

- (a) If a corporation, has not qualified as required by law to do business in the state of Idaho;
 - (b) Has had a wine distributor's license, retail wine license, wine by the drink license, or wine importer's license revoked by the director within three (3) years from the date of making such application;
 - (c) Has been convicted of a violation of the laws of this state or of the United States governing the sale of alcoholic beverages, wine, or beer, within three (3) years from the date of making such application;
 - (d) Has been convicted of a felony or been granted a withheld judgment following an adjudication of guilt of a felony within five (5) years from the date of making such application;
 - (e) If an individual or partnership, either the individual or at least one (1) of the partners of a partnership is not nineteen (19) years of age or older;
 - (f) If the application is for a retail wine license or wine by the drink license, the director finds that the applicant does not possess a retail beer license issued by the director, except that licensed wineries shall not be required to possess a retail beer license as a prerequisite to a separate retail wine license or wine by the drink license for sales at locations other than the winery's original licensed premises.
- (2) To determine qualification for a license, the director shall also cause an investigation which shall include a fingerprint-based criminal history check of the Idaho central criminal history database and the federal bureau of investigation criminal history database. Each person listed as an applicant on an initial application shall submit a full set of fingerprints and the fee to cover the cost of the criminal history background check for such person with the application.

History.

1971, ch. 156, § 7, p. 760; am. 1973, ch. 144, § 3, p. 281; am. 1974, ch. 27, § 65, p. 811; am. 1987, ch. 169, § 4, p. 330; am. 1992, ch. 315,

§ 4, p. 937; am. 1994, ch. 14, § 7, p. 20; am. 2001, ch. 284, § 4, p. 1014; am. 2010, ch. 87, § 1, p. 168.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 87, in paragraph (1)(f), deleted "which do not sell wine by the drink" following "licensed wineries," in-

serted "separate," and added "or wine by the drink license for sales at locations other than the winery's original licensed premises."

23-1314. Records and inspection of wineries, importers and distributors. — (1) Every winery, distributor and importer shall have, and notify the director of, a place of business within the state of Idaho.

(2) Each winery, distributor and importer shall keep at its place of business a record of its imports into, and sales of wine within, the state of Idaho. The import record shall include the date and quantity of import and the identity of the import seller and the import carrier or transporter. The sale record shall consist of a copy of the monthly report to the state tax commission required pursuant to section 23-1322, Idaho Code. Each winery, distributor and importer shall keep the record of each sale or import for a period of four (4) years thereafter and shall, on or before the fifteenth day of

each month, file the report with the director. The director may require such additional information to be included in such returns as shall assist him in determining whether or not such licensee is complying with this act and whether or not all taxes and fees provided for by this act are being fully paid.

(3) The director shall have the right at any time to make an examination of each winery's, distributor's and importer's books, records and premises, and such other matters as may assist him in verifying the accuracy of such reports.

History.

1971, ch. 156, § 14, p. 760; am. 1974, ch. 27, § 67, p. 811; am. 1984, ch. 105, § 2, p. 244;

am. 1984, ch. 221, § 6, p. 530; am. 1999, ch. 129, § 2, p. 373; am. 2000, ch. 333, § 2, p. 1123; am. 2011, ch. 130, § 4, p. 363.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 130, rewrote

the section to the extent that a detailed comparison is impracticable.

23-1319. Excise tax — Sales included — Refund for export sales — Refund for breakage or spoilage — Distribution of revenue. —

Upon all wines sold by a distributor or winery to a retailer or consumer and upon all wines sold and shipped directly to Idaho state residents by an out-of-state wine manufacturer holding a wine direct shipper permit under section 23-1309A, Idaho Code, for use within the state of Idaho pursuant to this chapter there is hereby imposed an excise tax of forty-five cents (4¢) per gallon. Sales of wine by a distributor or winery for the purpose of and resulting in export of wine from this state for resale outside this state shall be exempt from the taxes on wine imposed by this chapter.

(a) Every sale of wine by a distributor to a retailer shall constitute a sale of wine for resale or consumption in this state, whether the sale is made within or without this state, and the distributor shall be liable for the payment of taxes. In every sale of wine by a winery through any of its licensed retail outlets, the winery shall be liable for payment of taxes imposed by this section.

(b) When wine has been destroyed by breakage or has spoiled or otherwise become unfit for beverage purposes prior to payment of taxes on it, the distributor, upon satisfactory proof of destruction or spoilage, shall be entitled to deduct from existing inventories, subject to tax, the amount of wine so destroyed or spoiled.

(c) If the state tax commission determines that any amount due under this chapter has been paid more than once or has been erroneously or illegally collected or computed, the commission shall set forth that fact in its records and the excess amount paid or collected may be credited on any amount then due and payable to the commission from that person and any balance refunded to the person by whom it was paid or to his successors, administrators or executors. The commission is authorized and the state board of tax appeals is authorized to order the commission in proper cases to credit or refund such amounts whether or not the payments have been made under protest and certify the refund to the state board of examiners.

(d) No credit or refund shall be allowed or made after three (3) years from

the time the payment was made, unless before the expiration of that period a claim is filed by the taxpayer. The three (3) year period allowed by this subsection for making refunds or credit claims shall not apply in cases where the state tax commission asserts a deficiency of tax imposed by law, and taxpayers desiring to appeal or otherwise seek a refund of amounts paid in obedience to deficiencies must do so within the time limits elsewhere prescribed by law.

(e) All revenue received pursuant to this chapter shall be distributed as follows:

(1) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims as authorized in subsection (c) of this section and those moneys are continuously appropriated.

(2) The balance remaining after distributing the amount in paragraph (1) of this subsection shall be distributed as follows:

(i) Twelve percent (12%) shall be distributed to the substance abuse treatment fund which is created in section 23-408, Idaho Code;

(ii) Five percent (5%) shall be distributed to the Idaho grape growers and wine producers commission account; and

(iii) The remainder shall be distributed to the general account.

(f) Any person who is not a distributor or winery but who makes, whether as principal, agent or broker, any sales of wine not otherwise taxed under this section and not exempt from such tax, shall be liable for payment of taxes imposed by this section. This subsection shall not impose tax on wine sold pursuant to section 23-1336, Idaho Code.

History.

1971, ch. 156, § 19, p. 760; am. 1980, ch. 239, § 5, p. 554; am. 1980, ch. 391, § 2, p. 993; am. 1984, ch. 105, § 1, p. 244; am. 1984, ch. 221, § 9, p. 530; am. 1984, ch. 283, § 1, p.

656; am. 1986, ch. 73, § 5, p. 201; am. 1988, ch. 156, § 1, p. 282; am. 1990, ch. 18, § 1, p. 30; am. 1994, ch. 243, § 1, p. 762; am. 2006, ch. 29, § 2, p. 89; am. 2007, ch. 141, § 6, p. 407; am. 2013, ch. 23, § 1, p. 44.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 23, rewrote the last sentence in subsection (a), which formerly read: "In every transfer of wine by a

licensed winery to its licensed retail outlet, the winery shall be liable for payment of taxes."

23-1324. License and transfer fees — Alcohol beverage control fund. — All moneys from license and transfer fees that are collected by the director pursuant to the provisions of this chapter shall be paid over to the state treasurer for deposit in the alcohol beverage control fund created in section 23-940, Idaho Code. All other moneys collected by the director pursuant to the provisions of this chapter shall be paid over to the state treasurer for deposit in the general fund.

History.

I.C., § 23-1324, as added by 2012, ch. 160, § 3, p. 435.

STATUTORY NOTES

Cross References.

General fund, § 67-1205.

State treasurer, § 67-1201 et seq.

23-1326. Credit sales to retailers prohibited. — (1) No sale or delivery of wine shall be made to any retailer, except for cash paid at the time of or prior to delivery thereof, or except as provided by electronic funds transfer in accordance with subsection (3) of this section, and in no event shall any distributor extend any credit on account of such wine to a retailer, nor shall any retailer accept or receive delivery of such wine except when payment therefor is made in cash at the time of or prior to delivery thereof, or by electronic funds transfer in accordance with subsection (3) of this section.

(2) The acceptance of a first party check from a retailer by a distributor, or the use of a debit card by a licensed retailer, shall not be deemed an extension of or acceptance of credit pursuant to this section.

(3) The acceptance and use of an electronic funds transfer shall not be deemed an extension or acceptance of credit pursuant to this section, provided such transfer is initiated and completed promptly and in no event completed later than five (5) business days following delivery of such wine. Any attempt by a licensed retailer to delay payment of an electronic funds transfer pursuant to this section for any period of time beyond the time set forth in this subsection, shall be deemed an acceptance of credit by the licensed retailer.

(4) Any extension or acceptance of credit in violation of the provisions of this section shall constitute the giving and receiving of aid or assistance to or by a licensed retailer prohibited by the provisions of section 23-1325, Idaho Code.

History.

1971, ch. 156, § 26, p. 760; am. 1999, ch.

206, § 3, p. 553; am. 2011, ch. 255, § 2, p. 699; am. 2013, ch. 288, § 2, p. 760.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 255, added the subsection designations to the existing provisions; inserted “or except as provided by electronic funds transfer in accordance with subsection (3) of this section” and added “or by electronic funds transfer in accordance with subsection (3) of this section” in subsection (1); substituted “or the use of a debit card” for

“or the use of electronic funds transfer or debit card” and substituted “pursuant to this section” for “hereunder” in subsection (2); and added subsection (3).

The 2013 amendment, by ch. 288, substituted “completed promptly” for “completed as promptly as is reasonably practical” in the first sentence in subsection (3).

23-1327. Sale of wine in original container and size of containers. — No distributor shall purchase, receive, or sell any wine except in the original container as prepared for the market by the importer or manufacturer. No importer or distributor shall, without permission of the director, adopt or use any container for wine that will contain in excess of fifteen (15) gallons of wine.

History.

History. § 71, p. 811; am. 2005, ch. 32, § 1, p. 147; am. 1971, ch. 156, § 27, p. 760; am. 1974, ch. 27, 2013, ch. 142, § 1, p. 339.

STATUTORY NOTES

Amendments.

amendments. The 2013 amendment, by ch. 142, substituted “fifteen (15) gallons” for “one (1) gallon” near the end of the last sentence.



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